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Issues of Jordanian Civil and Commercial Justice

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TABLE OF CONTENTS

I. INTRODUCTION

This is the report of a research and observation visit to Jordan by three consultants in legal systems development, undertaken during the two-week period of February 7 to February 18, 2000. The consultants' task was to provide USAID/Jordan with an analytical overview of the major weaknesses and gaps in the Jordanian justice system's capacity to deal with commercial and civil disputes. The team was composed of Luis Salas, director of the Center for the Administration of Justice (CAJ) at Florida International University (FIU); Carl A. Cira, director of the Summit of the Americas Center at FIU and former USAID Mission Director in Colombia; and Stephen Liapis, a private financial consultant and former USAID Controller. During our visit the team interviewed numerous public officials, private attorneys, and private sector leaders. The report has some limitations, primarily caused by the breadth of the task and the limited time allotted for completion.

The overall purpose of the visit was to conduct a limited analysis of the normative, procedural and organizational capacity of the Jordanian justice system to respond to the growing demands placed upon its civil and commercial dispute resolution capacity, especially in the light of the expected increase in external investment.

The team was tasked to:

- Review the legal and constitutional norms that define the nature of the judicial function and the role of the judge. The review of these norms sought to identify the present normative and practical limits of the legal, organizational and functional structures in the commercial and civil dispute resolution system;

- Analyze the structure, organization and operational performance of the Judicial Branch of government, including the education, selection and training of judges and other court personnel. The focus here was to identify elements that may enhance or discourage judicial autonomy of action within the scope of their duties and to offer a range of options for potential attention and reform programming. Other information essential to an adequate analysis such as budgets, salary levels, personnel practices, disciplinary policies and transparency were also considered.

The report is divided into twelve chapters parts. The first five describe the nature of the problems and the normative structure of the courts and civil procedure; chapter 6 reviews the justice institutions while the following two chapters examine actors outside the system that regularly interact with it; chapter 9 describes the procedure used in civil proceedings while the following chapter examines the role of ADR as an alternative to traditional court operations; and chapter 11 points out the problems facing the system.

II. COMMERCIAL AND CIVIL DISPUTE RESOLUTION IN THE JORDANIAN JUSTICE SECTOR

1. Background

The Hashemite Kingdom of Jordan is a constitutional monarchy that was ruled by King Hussein bin Talal from 1952 until his death in 1999. Upon his death on February 7, 1999, King Hussein's oldest son, Crown Prince Abdullah bin Hussein, became Jordan's monarch. King Abdullah has initiated a series of reforms designed to respond to social demands and modernize the economic system. Recent agreements with the international financial institutions have led to some relief in managing Jordan's $7 billion foreign debt. Last year, the country achieved provisional World Trade Organization membership status, which is expected to improve the country's trading position and make Jordan a more attractive place for foreign investment.

The Access to Microfinance and Improved Implementation of Policy reform project (AMIR) was designed by USAID/Jordan to assist the private sector and the Government of Jordan to respond to the economic challenges of the new century and to respond to the USAID Mission's strategic objective of increasing "economic opportunity for Jordanians" through private sector growth. Chemonics International and a consortium of Jordanian and international subcontractors were awarded a four-year contract for implementation of this program.

The bulk of the AMIR project deals with micro and macro-economic reform. Law is a critical element in any attempt to modernize an economic system seeking to improve macroeconomic policy, improve international competitiveness, governance, and the sound use and protection of the environment. Law figures into the overall process of reform in many ways. Three of these are especially important: providing a fast and fair dispute-resolution system; establishing clear and modern norms that guarantee the security of investments while safeguarding environmental and social concerns; and strengthening and fairly distributing property rights.

Jordan has engaged in an ambitious legal and administrative reform process to meet the needs of accession to the World Trade Organization. The Government of Jordan (GOJ) is conscious that while the reform of its normative structure is a major achievement, the most difficult compliance task will be to ensure successful implementation of the reforms. The court system is a pivotal element in assuring effective legal security for the expected increase in sophisticated investment. The need for comprehensive judicial reform is emerging as a high priority area for the Government of Jordan, especially in the context of Jordan's renewed commitment to a private sector-led economic growth strategy. Several recent private sector surveys and studies have identified judicial reform as a notable concern of the private sector, and the King has repeatedly has expressed his personal interest in addressing the subject. The GOJ

has also recently focused on the need to increase the independence, professionalism and efficiency of the judiciary, in order to ensure the fairness and consistency of its legal system.

The protection of intellectual property rights is a prime example of the need to address legal concerns in economic development. As Jordan seeks to diversify its economic bases, it is focusing specifically on building capacity in information services and high technology, and these are already gaining in importance. Development in those arenas depends heavily on the establishment or refinement of modern copyright, patent, and trademark systems. Legal reform in this context is a delicate business. On one hand, intellectual property laws must be sufficiently clear and protective to attract international firms anxious about piracy. On the other hand, the laws must be shaped so as to protect Jordan's informational resources and stimulate domestic technological innovation. In the context of World Trade Organization (WTO) accession, Jordan is actively addressing the point, having passed a package of new legislation that appears acceptable to the WTO.

III. FOREIGN ASSISTANCE TO THE JUSTICE SECTOR

There has been relatively little external assistance directed to improvement of the Jordanian Justice Sector. The U.S. Government has provided the only notable recent help.

The AMIR program managed by Chemonics International is a major endeavor to improve private sector expansion and broaden participation in the economy. While AMIR does not have a specific judicial improvement or Rule of Law component, the World Trade Organization accession component contains an important series of law reform activities. Among these, the most significant is its support to the massive law reform effort designed to bring Jordan into compliance with WTO requirements. Recognizing that enactment of norms will not alone bring the country into total WTO compliance, the project has planned a series of training activities for police, prosecutors, judges, registrars, lawyers, and other system operators. The objective of this training is to educate participants in the new law reforms and their enforcement requirements.

Another separate Rule of Law initiative was supported primarily by the US Information Agency, now the Embassy Public Affairs Section, with some USAID funding, via the Institute for the Study and Development of Legal Systems (ISDLS). In 1995, the Institute began a collaborative effort with the Jordanian Judicial Council, undertaking a multi-year review of the causes for delay and backlogs in the Jordanian civil courts. The ISDLS external consultants' focus was on case management and mediation techniques as solutions to the efficiency problems presented by the current court processing system.

Phase One of this project presented a comparison of the Jordanian and U.S. legal systems using lectures and simulations of American jury trials and alternative dispute resolution (ADR)

techniques. Phase Two was a continuation of visits by U.S. consultants who discussed case management and ADR mechanisms (particularly judicial settlement, private mediation, and early neutral evaluation). Phase Three was a study tour by Jordanian lawyers and judges to San Francisco, where they observed case management demonstrations. Phase Four brought further visits of U.S. consultants to discuss concrete reform proposals with their Jordanian counterparts.[1]

A national reform conference was held in Jordan in mid-1999, concluding with support for the introduction of pretrial techniques aimed at delimiting issues to be considered for final resolution at trial. Subsequently, ISDLS conducted a two-and-a-half month effort in Amman for First Instance Court judges on case management techniques. This included another visit to the United States by 20 Jordanian lawyers and judges. As a result of this initiative, the Jordanian Legal Study Group (JLSG), with the assistance of ISDLS, developed a series of proposals for reform of the Jordanian Code of Civil Procedure. These were set out in a November 1999 report, but they have yet to be acted upon.

Currently there are two additional external proposals for follow-up to these initiatives. First, the ISDLS has proposed additional initiatives in Jordan, which would involve ISDLS in the proposed implementation of pilot projects that introduce case management and ADR techniques. Another U.S.-based institution has proposed a ten-month training program in the United States for 20 Jordanian judges to study ADR techniques. The elements are: a three-month intensive English language instruction program; a summer short course at the National Judicial College in Reno, Nevada; a subsequent Washington, D.C. program on court administration, substantive law and negotiation skills; a study tour of three U.S. cities and finally, attendance at a semester-long course on ADR at a U.S. university.

There are no other Rule of Law activities supported by the U.S. or any other bilateral assistance program or international agency, except for the French Government's minor assistance to the Judicial Training Institute, and the Spanish Government's donation of JD 50,000 for computers at the Ministry of Justice. While many Jordanian justice officials have been exposed to ADR as a possible means of addressing deficiencies in the current case processing system, and many of them have a positive view of these, there is no clear-cut consensus in the GOJ or the bar or judges in general on the adoption of these alternatives. There does appears to be general agreement on the utility of adopting measures to reduce the amount of time devoted by judge and lawyers in pretrial procedures. The planned USAID/AMIR training in the new WTO- related intellectual property legislation is positive, since there is already one case of software piracy before the First Instance Court of Amman, and the judges have not been oriented in the relevant new legislation.

Apart from the foregoing, the major thrust of U.S. assistance has been in other areas, primarily in water security, health/family planning and economic growth. In fiscal year 1998,

[1] This effort concluded with a National Reform Conference held on June 7-8, 1999 in Amman.

USAID economic assistance to Jordan totaled $150 million. In addition, the U.S. furnished $50 million in Foreign Military Financing (FMF), $1.6 million in International Military Education and Training Program (IMET) funds and $25 million in drawdown of excess defense articles. Jordan also received $15 million in PL-480 soft loans, and was eligible for $40 million in GSM 102 loan guarantees. USAID's economic assistance program for FY 1999 was $150 million and for FY2000, is projected at $200 million.

IV. THE NATURE OF THE PROBLEM

Jordan is a nearly landlocked country bordered by Syria to the north, Iraq to the northeast, Saudi Arabia to the east and south, and Israel to the west. It has existed as an independent nation only since 1949. The country is one of the poorest in the region with a per capita income of $1,550 and a population of about 4.8 million. The population has doubled and redoubled since Independence, primarily due to the displacement of Palestinians as a result of the formation of the State of Israel and the subsequent armed conflicts. It suffers from an inadequate supply of water and natural resources.

The financial crisis of the 80s compelled the government to renegotiate its foreign debt and accept an IMF program aimed at reducing the budget deficit and introducing structural reforms. The Gulf War and Jordan's support of Iraq caused a deterioration of relations with its Gulf neighbors, resulting in the forced return of thousands of Jordanians working in those countries, and further aggravated the nation's economic crisis. An increase in capital from workers returning to work in the Gulf states after 1992 temporarily improved the situation, but economic growth remains slow, per capita income is declining and unemployment levels are high, with GDP expected to have grown only by 2% in 1999.

To confront these problems, the country has entered into an ambitious program of reforms leading to a modernization of the economy and a withdrawal of the State from economic sectors. Last year the government entered into a new IMF agreement and rescheduled foreign debt payments with the Paris Club. That same year, Jordan signed a Trade and Investment Framework Agreement to remove impediments to trade and investments. The U.S. further recognized the need for a reinvigorated Jordanian economy as a key to regional stability by allowing duty-free treatment for products produced in Qualifying Industrial Zones (QIZ) for export to the United States. Further U.S. support came in the form of a large USAID assistance program targeted at improving the management of the country's water supply, strengthening the private sector, and encouraging family planning measures. Finally, Jordan has recently been granted provisional status in the World Trade Organization after enacting an impressive set of norms to comply with membership requirements.

While these reforms have gone a long way toward improving Jordan's investment climate, they have been insufficient to overcome "a difficult commercial and legal environment; cumbersome business start-up procedures; burdensome regulations; and investor uncertainty over regional stability."[2] However, one area of great concern for investors, inadequate laws to protect intellectual property, has been addressed recently, leading to Jordan's removal from the United States' Trade Representative's "Watchlist" of countries offering inadequate intellectual property protection.[3]

While Jordan has embarked on an ambitious law reform process, rights guaranteed by the new legislation are safeguarded by a cumbersome judicial organization, administratively antiquated and dependent on the Executive and characterized by formality, processing delays and insecurity of outcomes. This lack of legal security will continue to plague the foreign and national investor and is a real and present barrier to further economic development. An analysis of some of the issues follows.

V. THE NORMATIVE STRUCTURE[4]

Jordan's normative framework originated with the different colonial powers that have ruled the region during this century.[5] These include laws dating back to the Ottoman Empire, especially the Ottoman civil code.[6] Some influence can be detected from British rule during the Mandate Period (1918-1948). Egyptian influences are also present in the legislative corpus. This combination of legal influences, combined with legal training in Egypt, the United States, the United Kingdom, and France, has led to a tradition consistent with other Middle Eastern countries that were under foreign control during much of their modern history. Jordan today remains essentially a code-based legal system, having derived its normative and procedural structure primarily from the Egyptian codes, which themselves were based on the French tradition and models of the 19th and early 20th centuries.[7] Thus, while the recently approved and other pending modernizing substantive laws that will facilitate international commerce will

[2] US Department of State, "FY 2000 Country Commercial Guide: Jordan," 1999, p. 5.

[3] In April 1998, the US Trade Representative included Jordan in the "Special 301" Watch List for inadequate protection of intellectual property rights. The following year Jordan was removed.

[4] The Country Handbook for Jordan, although somewhat out of date, still contains a good source of material on the legislative and national history of Jordan. Helen Chapin Metz, ***Jordan: A Country Study*** (Federal Research Division, Library of Congress, 1989). See also: Fouad B. Atalla, "Jordan," ***Int'l Encyclopedia Comp. L.***, J-28-J.29 (Victor Knapp ed., 1973); "The Legal System of Jordan," ***Middle East Legal Systems*** (S. H. Amin, ed 1985).

[5] For a review of some of these shifts in foreign influences see: Norman Anderson, ***Law Reform in the Muslim World*** (1976).

[6] For an overview of Ottoman influence see: Haim Gerber, ***State, Society And Law In Islam: Ottoman Law In Comparative Perspective*** (1994).

[7] For a brief history of Egyptian legal development see: Farhat J. Ziadeh, ***Lawyers, the Rule of Law and Liberalism in Modern Egypt***, (1968); Farhat J. Ziadeh, ***Property Law In The Arab World: Real Rights In Egypt, Iraq, Jordan, Lebanon, Libya, Syria, Saudi Arabia And The Gulf States*** (1979).

contain provisions recommended by the WTO and other international bodies, the interpretive process will remain based on the Code of Civil Procedure of 1988 and the few relevant precedents of the Court of Cassation.

The legal system of Jordan is based on a combination of *Shari'a*[8] (Islamic law) and laws of European origin. During the nineteenth century, when Jordan was part of the Ottoman Empire,[9] some aspects of European law, especially French commercial law and civil and criminal procedures, were adopted. English common law was introduced in the West Bank between 1917 and 1948, when the area was incorporated into the British-administered League of Nations Mandate of Palestine, and introduced in the East Bank during the years 1921 to 1946, when the East Bank comprised the British Mandate of Transjordan.

Until the nineteenth century, the only source of law considered valid in the region that became Jordan was Islamic religious law, or *Shari'a*.[10] This law and its application had remained static for centuries, subject only to interpretation by the *ulama* or religious scholars, and enforcement by Muslim judges *qadis* in *Shari'a* courts. Secular rulers could not, in theory, legislate rules to govern social behavior; they could only issue edicts to implement immutable divine law.

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[8] Shari'ah literally means "the clear path," meaning the clear path chosen by God for man, and refers to what is now known as Islamic law. Ahmad Hasan, ***The Early Development of Islamic Jurisprudence*** (4th ed. 1988). "There are four sources of Islamic law unanimously accepted by the four Sunni schools of jurisprudence - the *Qur'an*, the *Sunnah*, *"ijma"*, and *qiyas.* The *Qur'an* is the divine word of God, revealed to Muhammad, His Messenger (P.B.U.H.). The text of the *Qur'an* has been unchanged from the time of the original revelation. Although it does contain some specific legislation, it does not seek to be "pan-legistic," and therefore instead of setting down all the minute details of life, it illustrates basic guiding principles. The *Sunnah* are the sayings and practices of the Messenger Muhammad (P.B.U.H.), revealed to him by God in meaning, not exact text, as preserved in a written record called the *Hadith*. These authenticated traditions explain and illustrate some of the Qur'anic generalities n56 and are a model of exemplary behavior for Muslims. *Ijma'* is a consensus of opinion and signifies "agreement of jurists on a rule of law." *Qiyas*, or analogical reasoning, is used to apply the textual rule provided for a specific situation to another situation not specified, by identifying a common underlying cause (*illah*) for the law between them. The ultimate source of Islamic law is God alone, and so the two primary sources are the *Qur'an* and *the Sunnah; ijma'* and *qiyas* are actually principles used "to derive the law from the two primary sources." Zainab Chaudhry, "Comment: The Myth of Misogyny: A Reanalysis of Women's Inheritance In Islamic Law," 61 ***Alb. L. Rev.*** 511, 519 (1997).

[9] Haim Gerber, ***State, Society And Law In Islam: Ottoman Law In Comparative Perspective*** (1994).

[10] For explanations of the influence of Shar'ia see: Farhat J. Ziadeh, "Permanence and Change in Arab Legal Systems," 9 ***Arab Stud. Q.*** 20 (1987). For a general review of Islamic law, see: J.N.D. Anderson, ***Islamic Law In The Modern World*** 1-16 (1959); Matthew Lippman Et Al***., Islamic Criminal Law and Procedure: An Introduction*** (1988); Hassan Afchar, *The Muslim Conception of Law, in* ***2 Int'l Encyclopedia Comp. L***. 84 (1975); Chafik Chehata, "Islamic Law," 2 ***Int'l Encyclopedia Comp. L.*** 1975, at 138; Ann Elizabeth Mayer, "Law and Religion in the Muslim Middle East," 35 ***Am. J. Comp. L***. 127 (1987); John J. Donohue & John L. Esposito, eds, ***Islam In Transition: Muslim Perspectives*** (1982). For a description of Jordanian religious law, applicable in the West Bank, see Fouad B. Attala, "Jordan", in ***Int'l Encyclopedia Comp***. L. J-28-J.29 (Victor Knapp ed., 1973); S.H. Amin, ***Middle East Legal Systems*** 244 (1985).

In the mid-1800s, reforms of the system were instituted to enhance Ottoman control of the area. Introduction of the Napoleonic code system in Europe in the nineteenth century coincided with a period of decay in the Ottoman Empire and a desire among its rulers to adopt European models of the State and its administration. Comprehensive codes of law based on European models became the basis of a new legal system, and in 1858, for example, a criminal code was adopted to support the reform movement. The new code was based on French law, but in effect it complemented *Shari'a* with the French code being modified to accommodate Muslim customs. For example, the Ottoman criminal code that imposed the payment of blood money in addition to imprisonment for acts of homicide or bodily injury, and the death penalty for apostasy was retained.

The Ottomans also influenced civil law with the Civil Law of 1867 and 1876[11] becoming applicable for all Arab countries in the Empire and still influencing current legislation.[12] Although the inspiration for the civil legislation was French one important exception was in the fields of contracts and torts. The Ottoman Empire attempted to introduce a new codification, European in form, but inspired in the Islamic law of the Hanafite sect. The result was the *Mejelle* Code[13] enacted in 1869.[14] In the commercial field, however, a Code of Commerce superseded the new code[15] and a new Code of Civil Procedure was introduced in 1880. In the field of family law, reform came much later (1917) and religious tribunals continued to exercise jurisdiction over these matters.[16]

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[11] John Quigley, *Judicial Autonomy in Palestine: Problems and Prospects*, 21 ***U. Dayton L. Rev***. 697 (1996). The codification incorporated elements of French law. This legislation permitted secular courts to supplant Islamic courts in Palestine during the Ottoman period.

[12] In 1926, the French version of the Swiss Civil Code was translated into Turkish and adopted, with few changes, as the Turkish Civil Code. In 1927, the Civil Procedure Code of the Swiss canton Neuenburg was adopted as the Turkish Civil Procedure Code. In 1928, the German Criminal Procedure Code was also translated and integrated into Turkish law. Christian Rumpf, ***supra.*** This followed a pattern of adopting foreign codes that were considered to the most modern and reformist. Thus, in 1926, the Italian Penal Code replaced the Ottoman Penal Code, which had, itself, been inspired by the French.

[13] An English language translation of the Mejelle can be found in C. A. Hooper, *The Civil Law* ***of Palestine and Trans-Jordan***, Jerusalem (1933).

[14] Almost all of the Arab Civil Codes drew on the Muslim *Shari'a* law as codified by the *Mejelle Code* Hisham R. Hashem, ***The Jordan Civil Code of Moslem Jurisprudence***, Amman: Hr. Hashem, 1990, p. III. The Ottoman Land Code was drafted in 1858 and the *Mejelle* Code between 1870 and 1876. The *Mejelle* Code served as the rule of law in Ottoman Israel, Jordan, Lebanon, and Syria until the fall of the Ottoman Empire in 1922 and even beyond this date into the British Mandate. See generally: Dante A. Caponera, ***Principles of Water Law and Administration*** (1992). The *Mejelle* deals with two main areas of law - obligations and civil transactions; and evidence. S. H. Amin, ***supra***, 250.

[15] In order to improve its trade with Europe, the Ottoman Empire had adopted the French commercial code in 1830. Nayla Comair-Obeid, ***The Law of Business Contracts in the Arab Middle East: A Theoretical and Practical Comparative Analysis (with Particular Reference to Modern Legislation*** (1996). See also: N. Saleh, "Legal System," in The Cambridge Encyclopedia of the Middle East and North Africa (1988).

[16] Herbert J. Liebesny, "Impact of Western Law in the Countries of the Near East," 22 ***Geo. Wash. L. Rev***. 127 (1953).

Ottoman society was heavily influenced by Europe with many Turkish students attending European universities. The first Turkish faculty of law was founded in 1900 at the Darulfunun (Istanbul University). European professors, especially from France, Germany, Switzerland, and Italy, helped the young Turkish lawyers acquaint themselves with the legal thinking behind the positive law as received from continental Europe. A system of legal education that followed the French *licence* system was also adopted.[17] Turkish lawyers undertook four years of legal studies at the university, followed by an apprenticeship with a practicing lawyer, much in the same way as Jordanian students become lawyers today.

Egypt followed a diverse path of legal development from many of the other Arab countries. At the time that the *Mejelle* was promulgated, Egypt had already achieved judicial and administrative independence from the Ottoman Empire. The year prior to the enactment of the *Mejelle* Code, Egypt promulgated a Civil Code for courts that dealt with relations between or involving foreigners and non-Muslims (Mixed Courts) and in 1883 enacted another Civil Code for the National Courts. The Napoleonic Code inspired both.[18]

After World War I, with the end of the Ottoman Empire, Great Britain became the League of Nations mandatory power for Palestine and Transjordan, and British statutes supplemented the Ottoman laws in force. This influence was strongest in Palestine where, for example, the 1858 penal code was replaced by a new penal code and a code of criminal procedure patterned on those used in British colonies. British and British-trained judges, who often applied English common law, staffed the Palestinian courts and decisions could be appealed to the judicial committee of the Privy Council in London. However, English legal influence was weaker in Transjordan[19] and Iraq, where there were no British judges, and common law was not applied in the courts. Instead, the criminal laws continued to retain the European influence of the Ottoman code of 1858.[20]

As for civil law, the Ottoman influence continued long after World War I when the Arab countries began to enact their own civil legislation with the end of the British and French

[17] Christian Rumpf, "The Importance of Legislative History Materials in the Interpretation of Statutes in Turkey," 19 ***N.C.J. Int'l Law & Com. Reg***. 267 (1994).

[18] The departure from *Shari'a* principles represented by the Code was the subject of much criticism and gave way to a compromise Civil Code adopted in 1948. In the absence of specific provisions governing an issue, judges were to resort to custom, then to the *Shari'a* and finally to natural law if all else failed. "For probably the first time in the modern legal history of the Arab Middle East, the *Shari'a* was to back up an important piece of secular legislation. *Shari'a* principles were to fill lacunae found in the statutory provisions and in custom." Nabil Saleh, "The Law Governing Contracts in Arabia," 38 ***Int'l & Comp. L. Q***. 761, 768 (1989).

[19] The Organic Law of Transjordan, enacted in 1928, provided that the Ottoman legislation, in force in 1914, would remain the law of the law except in those instances in which it had been expressly amended or repealed. S. H. Amin, ***supra***.

[20] In Iraq, new codes of criminal law and procedure were enacted as a mixture of British, French and Ottoman rules. Herbert J. Liebesny, ***supra.***

Colonial era following World War II. Egypt was the first to enact its own civil code in 1948,[21] which had a major influence in the region,[22] with Jordan adopting its own civil law in 1976, based heavily on Egypt's.[23] Egypt's new code was significant in that *Shari'a* would only be applied in the absence of a legislative provision in the code regulating the specific action.[24] All of these civil codes drew from the principles of *Shari'a* while also relying heavily on the French Civil Code. European influence was mostly felt in areas not contemplated by *Shari'a* (insurance, bankruptcy, labor, corporations, and others).

When the Hashemite Kingdom of Jordan was proclaimed in 1949, the old Ottoman codes had been significantly modified under the influence of moderates who believed that its *Shari'a* - based provisions should be supplemented by--and, if necessary, subordinated to--laws dealing with modern problems. The period of British tutelage did not significantly change the substantive law, but weakened the absolutist *Shari'a* traditions in criminal jurisprudence. In the early 1950s, a committee of leading Muslim scholars and jurists of several Arab countries was formed to draft new codes of criminal law and procedure to replace the 1858 Ottoman code. In 1956 the Jordanian National Assembly adopted a new criminal code and code of criminal procedure. Both were based on the Syrian and Lebanese codes, which in turn were modeled on French counterparts.[25]

Table 1 presents enactment dates of some of the major Jordanian legislation. Much of Jordan's normative framework appears quite recent. However, most of the recent laws have been specifically targeted at limited legal sectors, while the more comprehensive substantive and procedural laws are more outdated. For example, the 1976 Civil Code still regulates the majority of legal transactions, the Commercial Code dates back to 1966, and the Code of Civil Procedure that sets out procedure to be followed in civil cases.

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[21] Egyptian law, with the exception of matters of personal status, was influenced by French practice. The French hold was so strong that when Britain attempted to introduce their own reforms during British occupation, the Egyptian bar resisted them successfully. Herbert J. Liebesny, ***supra.*** For a translation into English see: Parrot, Fanner & Sims Marshall, trans., ***The Egyptian Civil Code*** (1952).

[22] "At this time Egypt, the leader of Arab unity, had just provided itself with a civil code perfectly capable of being spread outside its own frontiers. In accepting these dispositions, sometimes in their entirety, Middle East legislators made a show of Arabism but while doing so accepted Western law of obligations, from France in particular. The Egyptian Code of 1948 has thus shown itself for twenty years the best 'vehicle' of French legal experience in this part of the world." Jean Marc Mousseron, "La Réception au Proche-Orient du droit Français de obligations," ***Revue Internationale de droit Comparé*** (1965); cited by Nayla Comar-Obeid, ***supra***, p. 122.

[23] Egypt was greatly influenced by the French legal system, not only because of a brief occupation from 1798 to 1801, but also because of gradual and indirect influence over nearly two centuries. *See, e.g.,* P.J. Vatikiotis, ***The History Of Modern Egypt,*** 40-41 (1991); Peter Mansfield, ***The British In Egypt*** 127-31 (1971).

[24] Nabil Saleh, ***supra***.

[25] The original criminal codes and code of criminal procedure of Syria and Jordan were based, at points almost verbatim, on the Lebanese codes. In Jordan, some British principles were included in what was otherwise a continental system. Theodore E. Mogannam, "The Practical Application of the Law in Certain Arab States," 22 ***Geo. Wash. L. Rev.*** 142 (1953).

Jordan's application to the World Trade Organization required a massive review and overhauling of its normative framework affecting commercial transactions. As a condition of WTO accession, the GOJ committed itself to enacting WTO laws during the Parliament Ordinary Session (November 1999-February 2000). The achievement of this massive undertaking cannot be underestimated as the reformers encountered opposition from affected industries and others who complained that such reforms would undermine prior protectionist or statist policies. The reforms included amendments or overhauling of sixteen laws (especially those relating to intellectual property) and the issuance or review of 16 regulations. It is expected that Jordan will be able to meet its legislative commitment for full WTO membership by May, 2000.

TABLE 1

MAJOR JORDANIAN LEGISLATION AND DATES OF ENACTMENT

Arbitration Act[26]	1952
Banking Law	1971 as amended in 1992
Civil Code[27]	1976
Code of Civil Procedure[28]	1988
Commercial Law[29]	1966
Company Law[30]	1997
Constitution	1952
Income Tax Law	1992 as amended in 1992 & 1995
Investment Promotion Law[31]	1995
Labor Law[32]	1996
Law on Court Organization[33]	1952
Maritime Commercial Law	1972
Penal Code	1960
Stock Market Law	1997
Telecommunications Law[34]	1995

[26] Law No. 18, December 29, 1952 in Official Gazette, January 17, 1953.
[27] Law 43/1976 of August 1 1976, Official Gazette of August 1, 1976.
[28] Law No. 24/1988 replacing the Code of 1952.
[29] Commercial Law No. 12 of 1966.
[30] Companies Law No. 22 of 1997.
[31] Investment Promotion Law No. 16 of 1995, 4075, 1995.
[32] Labor Law No. 8 of 1996, 4113, 1996, at page 1173, as amended in Law No. 12 of 1997.
[33] Law of March 29, 1952, Official Gazette no. 1105 of April 16, 1952 amended by Law No. 13 of 1994.
[34] Telecommunications Law No. 13 of 1995, 4072, 1995.

VI. THE JUDICIARY

The Constitution of 1952 concentrates a high degree of executive and legislative authority in the King, who determines domestic and foreign policy. The King appoints a Prime Minister and other Cabinet members to manage the daily affairs of government. The Parliament consists of the 40-member Senate, appointed by the King, and the 80-member Chamber of Deputies, elected every 4 years. Legislative proposals are normally submitted to the Council of Ministers and subsequently forwarded to the Chamber of Deputies and subsequently to the Senate. All laws require royal assent before they become effective.

The Constitution provides for separate judicial, legislative and executive authorities of government under overall Royal authority. While the judiciary enjoys relative functional and decisional autonomy, the Ministry of Justice, an executive cabinet-level agency, controls and administers the judiciary's budget and personnel as though the latter were a division of the Ministry. The Justice Minister, a member of the Royal Cabinet, is responsible for the supervision of the civil Courts and other judicial departments and makes or strongly influences most decisions concerning judicial selection and assignment. The Ministry of Justice has about 2000 personnel, including 418 judges. Most of the support personnel are employed in the court system as clerks, scribes, process-servers and other auxiliaries to the judicial function.

Under the Court Establishment Law of 1951 and the Constitution, the judiciary is independent. Article 99 of the Constitution classifies the judiciary into three categories: religious (*Shari'a*) courts, special courts (military, customs, tax, labor, settlement, municipal and juvenile), and ordinary (*nizamiyya*) courts. Religious courts were established following the Ottoman model of separate communal jurisdiction over certain areas of law for the different religious communities. Jordan, like most of the former Ottoman territories, affords the *Shari'a* courts exclusive jurisdiction over matters of personal status and blood money where the parties are Muslims, and Islamic *waqf*.[35]This report will focus on the ordinary court system.

[35] Lynn Welchman, "The Development of Islamic Family Law in the Legal System of Jordan," 37 ***Int'l & Comp. L. Q.*** 868 (1988). "The legal definition of *waqf* ... is the "detention of a specific thing in the ownership of the *waqf* or appropriator and the devoting or appropriating of its profits or usufruct in charity on the poor or other good objects.'" Before a *waqf* can be valid, four conditions must be met: (1) the founder must have reached the age of majority and be of sound mind with full, unrestricted ownership of the property; (2) the property must be of a permanent nature and yield a profit; (3) the *waqf* must be made in perpetuity; and (4) the purpose of the *waqf* must be pleasing to God (i.e., it must not violate any objective of the law) and the ultimate purpose must be for the benefit of the poor." Zainab Chaudhry, "Comment: The Myth of Misogyny: A Reanalysis of Women's Inheritance In Islamic Law," 61 ***Alb. L. Rev***. 511, 547 (1997). For a more complete analysis of the *waqf* see: Henry Cattan, "The Law of *Waqf*," in 1 ***Law in the Middle East: Origin and Development of Islamic Law*** 203, 213-15 (Majid Khadduri & Herbert J. Liebesny eds., 1955); Asaf A. A. Fyzee, ***Outlines of Muhammadan Law*** 218 (4th ed. 1974); Monica M. Gaudiosi,

The ordinary courts in the Kingdom of Jordan are organized generally as in most other countries, forming a jurisdictional and functional hierarchy. Two successive levels of lower courts, the Magistrate Courts and the First Instance Courts, are followed by the Courts of Appeal, and finally, at the top of this organizational pyramid, there are two courts, the Court of Cassation and the High Court of Justice. The system is based on the Ottoman model of *nizamiyya* courts, which were modeled after the French system.

All of these courts hear both criminal and civil matters, and all judges may preside over both. In the lower courts, there is no formal division or grouping of judges into criminal, civil, commercial or the like. There is some discretionary specialized assignment of judges by the chief judges from time to time. While some additional special courts exist and may be referred to briefly below, it is this basic structure that concerns us in this report. As in most Islamic countries, the civil court system described above is paralleled by a separate system of religious courts, also constitutionally created. These are described below, but analysis of their functioning is beyond the scope of this report.

1. Organization and Structure

The ordinary court jurisdiction is exercised at four levels: the Magistrate Courts, the Courts of First Instance, the Courts of Appeal, and the Court of Cassation (the Supreme Court). There are 147 magistrates that exercise jurisdiction over minor civil and criminal cases. A Special Criminal Court tries capital criminal cases while the 114 First Instance judges exercise general jurisdiction in all matters civil and criminal, with the exception of capital cases. At the First Instance, a panel of three judges sits for all major non-capital crimes trials; two judges sit for misdemeanor and civil cases. The Courts of First Instance also exercise limited appellate jurisdiction in cases involving judgments or fines imposed by the Magistrate Courts.

There are currently three regional Courts of Appeal whose appellate jurisdiction extends to judgments of the Courts of First Instance, the Magistrate Courts, and the Religious Courts. The highest court is the Court of Cassation in Amman; its chief judge, who is appointed by the King, serves as the country's chief justice. All 22 judges of the court sit in full panel when important cases are being argued. For most appeals, however, only five judges hear and rule on the cases.

The religious courts are divided into *Shari'a* courts for Muslims and ecclesiastical courts for the minority Christian communities. These courts are responsible for disputes over personal status (marriage, divorce, child custody, and inheritance) and communal endowment among their respective communities. One judge, called a *qadi,* sits in each *Shari'a* court and decides cases on the basis of Islamic law. Three judges, usually members of the clergy, sit in each ecclesiastical

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"The Influence of the Islamic Law of *Waqf* on the Development of the Trust in England: The Case of Merton College," 136 ***U. Pa. L. Rev***. 1231 (1988); Colin Imber, Ebu's-su'ud, ***The Islamic Legal Tradition*** (1997).

court and render judgments based on various aspects of canon law as interpreted by the Greek Orthodox, Melchite, Roman Catholic, and Anglican traditions. Appeals from the judgments of the religious courts are referred to special Religious Courts of Appeal. In disputes involving members of different religious communities, the civil courts have jurisdiction unless the parties mutually agree to submit to the jurisdiction of one of the religious courts. In case of jurisdictional conflicts between any two religious courts or between a religious court and a civil court, the president of the Court of Cassation appoints a three-judge special tribunal to decide jurisdiction or to hear the case.

In order to assure independence for these judges, the law on *Shari'a* courts[36] called for the creation of a Judicial Council composed of five members, presided over by the President of the *Shari'a* courts. The law sets forth the mechanism for the selection, promotion and discipline of these judges and the Council guarantees their tenure. The President of the Shari'a courts supervises the functioning their functioning with the assistance of a director and an inspector.[37]

Special courts include the High Court of Justice, which hears all appeals from rulings of administrative agencies in which the Government is a party. There is also a special court known as the Land Settlement Court. After 1976 when tribal law was abolished, tribal matters came under the formal jurisdiction of the regular courts, but adjudication apparently was still handled informally in traditional ways by local intermediaries or tribal authorities.

The Jordanian judiciary is organized in the following hierarchical structure:

1.1. The Court of Cassation

The Court of Cassation and its administrative law counterpart, the High Court of Justice, are the nation's highest tribunals and sit at Amman. The Court of Cassation is composed of a Chief Judge, named by the King, and a number of members (currently 22) named by the Judicial Council and selected from among senior judges, outstanding members of the bar or law faculties. Sitting in six-judge panels, they hear all cassation (law challenges) appeals from Courts of Appeal. This is the nation's highest court and final authority in questions of correct application of the law.

The Court of Cassation does not review issues of error in the facts or the correctness of the procedures applied by the lower courts. Its only function is to examine whether the law has been correctly applied below. In cases where a panel of the Court of Cassation disagrees with a previous precedent by the same court, they must call for a session convening all of the Judges of the Court of Cassation to hear the matter in general assembly. The resultant decision will be considered as a precedent. By custom, but not by law or constitutional requirement, the rulings of

[36] Law on *Shari'a* Courts, law no. 19/1972.
[37] For a description of these courts see: Senator Adeeb Halassa, "The Judicial System in the Hashemite Kingdom of Jordan and the Principles on which it is Based," Unpublished and undated manuscript, 16.

the Court of Cassation are normally considered as precedents, which should be followed thereafter by all other courts. In fact, this customary jurisprudential principle is apparently not uniformly followed. Some interviewees asserted that the lower courts often ignore the customary practice, thus further diminishing the degree of legal security that can be said to exist.

1.2. High Court of Justice

This tribunal is an administrative appeals court composed of 9 members named by the Judicial Council, who act in all in which the Government is sued in its Executive capacity. They serve for an indeterminate period and may be removed by the Judicial Council.

1.3. Courts of Appeal

Courts of Appeal are formed pursuant to the Law of Formation of Courts in Amman, Irbid, Ma'an, and Jerusalem. At present, the Jerusalem Court is suspended. These courts sit as three-judge panels, except in cases of first impression on new legislation or a previously unresolved legal issue, when the panel is formed of five judges.

These three operating regional Courts of Appeal have 51 judges (24 in Amman, 2 in Irbid and 25 in Ma'an). There are two additional Special Courts of Appeal, the Customs Court of Appeals, with 3 judges, and the Tax Court of Appeals with twelve judges. The latter hears appeals from income tax rulings of the Ministry of Finance, and its rulings are appealable to the Court of Cassation. Three or four judges hear customs appeals and nine or ten judges hear tax appeals.

Appeals Court judges are selected by the Judicial Council from senior First Instance judges or outstanding members of the bar or law faculties. They serve for a minimum of two years and may be removed or sanctioned by the Judicial Council.

1.4. Major Crimes Court[38]

Almost at the level of the Courts of Appeal is a Major Crimes Court sitting in Amman to handle major criminal offenses. Two panels of three judges hear all trials of those charged with one of seven serious crimes whose potential sentence may be death, life sentences or more than 15 years at hard labor. Murder, rape, attempted rape, and other serious crimes are tried before this tribunal.[39] Appeals from their rulings and decisions are directly to the Court of Cassation which must accept appeals if the sentence exceeds five years.

[38] Interim Law No. 33/1976 established this court. Law No. 16/1986 modified this law. One author has commented "I do not know the reason for the establishment of such a court, since the Court of First Instance in the Kingdom in its capacity as the criminal court used to hear these crimes and no complaint had been recorded in this effect." Adeeb Halassa, ***supra,*** 16.

[39] Its jurisdiction is defined by Articles 326, 327, 328, 330, and 338 of the Penal Law.

1.5. First Instance Courts

There are 12 Courts of First Instance, one in each of Jordan's Governorates or basic administrative districts.[40] Thirty-three of the 114 First Instance judges sit in Amman These courts exercise jurisdiction in all civil and criminal cases falling beyond the jurisdiction of the Magistrate Courts, as well as hearing all appeals from the rulings of those lower courts. Each First Instance Court is made up of a Chief Judge and as many additional judges as are determined by the Ministry of Justice to be required. As with all other lower courts, the First Instance Courts and the number of their judges are established according to a Cabinet Regulation and Royal Decree.

In all non-capital serious criminal cases, a two-judge panel presides. Two judges also preside when the First Instance Court is hearing an appeal from a Magistrate Court ruling, whether criminal or civil. Finally, a single judge presides in all misdemeanors and in all civil cases coming before the First Instance Court on original jurisdiction.

A ruling by a First Instance Court may be appealed within 30 days of issuance or of notification, unless otherwise stipulated.

1.6. Magistrate Courts

These are the lowest level courts, whose jurisdiction covers minor criminal matters in which the penalty does not exceed two years imprisonment, and civil cases where the claim does not exceed 750 JD (Jordanian Dinars) or about US$1,087, and in criminal cases involving maximum fines of JD100 or maximum prison terms of two years. They may be compared to Magistrate Courts or Small Claims Courts in the U.S. Matters ranging from bad checks to landlord-tenant disputes, simple assaults, petty thefts and the like are treated at this level. The law urges the magistrate to conciliate the issues; failing such, the matter goes to trial.[41]

There are 38 Magistrate Courts in the country and 9 Municipal Courts having the same function, each consisting of a Chief Judge and as many other judges as needed in the particular district. Additional Magistrate Courts may be established by Cabinet Regulation, originated in the Ministry of Justice, and certified by Royal Decree. There are 147 Magistrate judges in the country with 36 of them sitting in Amman. Additional Magistrate Courts may be established by

[40] There are twelve "governorates" (Ajlun, Al 'Aqabah, Al Balqa', Al Karak, Al Mafraq, 'Amman, At Tafilah, Az Zarqa', Irbid, Jarash, Ma'an, Madaba).
[41] Article 9 and 10 of the legislation creating the Magistrate Courts.

Cabinet Regulation, originated in the Ministry of Justice, and certified by Royal Decree. One item of interest for commercial and investment facilitation is the jurisdiction at this level over criminal trademark infringement cases, which are classified as misdemeanors.

Cases in the Magistrate Courts are presided over by a single judge, and most of these judges are normally the newest and least experienced members of the judiciary. The average age of Justice of the judges is 26 years. Five of Jordan's six woman judges are Magistrates. Litigants at this level may represent themselves or be represented by a lawyer. Magistrate rulings may be appealed to the Court of First Instance within ten days of issuance or of notification when the penalty is ten days or more of imprisonment or the claim was for more than 100 JD. However, if the court ruling was a monetary fine for a violation of law, it is final and unappealable.

In addition to these traditional courts, there are number of important special or administrative courts. For example, there is a Customs Court of First Instance within the Customs Department and its decisions may be appealed to the Customs Appeals Court.

1.7. Government Attorneys

Originally the State was represented by an Attorney General's Office, which prosecuted criminal cases while also appearing in all actions in which the State was a party. Under the current structure these two functions have been separated with a General Advocate's Office representing the State in civil matters while an Attorney General's Office prosecutes criminal cases. The only instance in which both institutions appear jointly is in the Major Crimes Court in which lawyers from the General Advocate's Office supervise the prosecutors. The Law on Judicial Independence affords the same degree of judicial independence to these attorneys as is accorded to judges.[42]

The Court of Cassation appoints a Chief of Public Prosecution[43] to represent the State in criminal cases before the Court of Cassation. A counterpart Chief Government Attorney, and assistants, appointed by the Judicial Council[44] represent the Government in civil or administrative cases in which the State is a party. A Public Prosecutor and a cadre of assistants are appointed to represent the State at the Appeals Court level and prosecutors and government attorneys are also named to represent the Government at the First Instance level.
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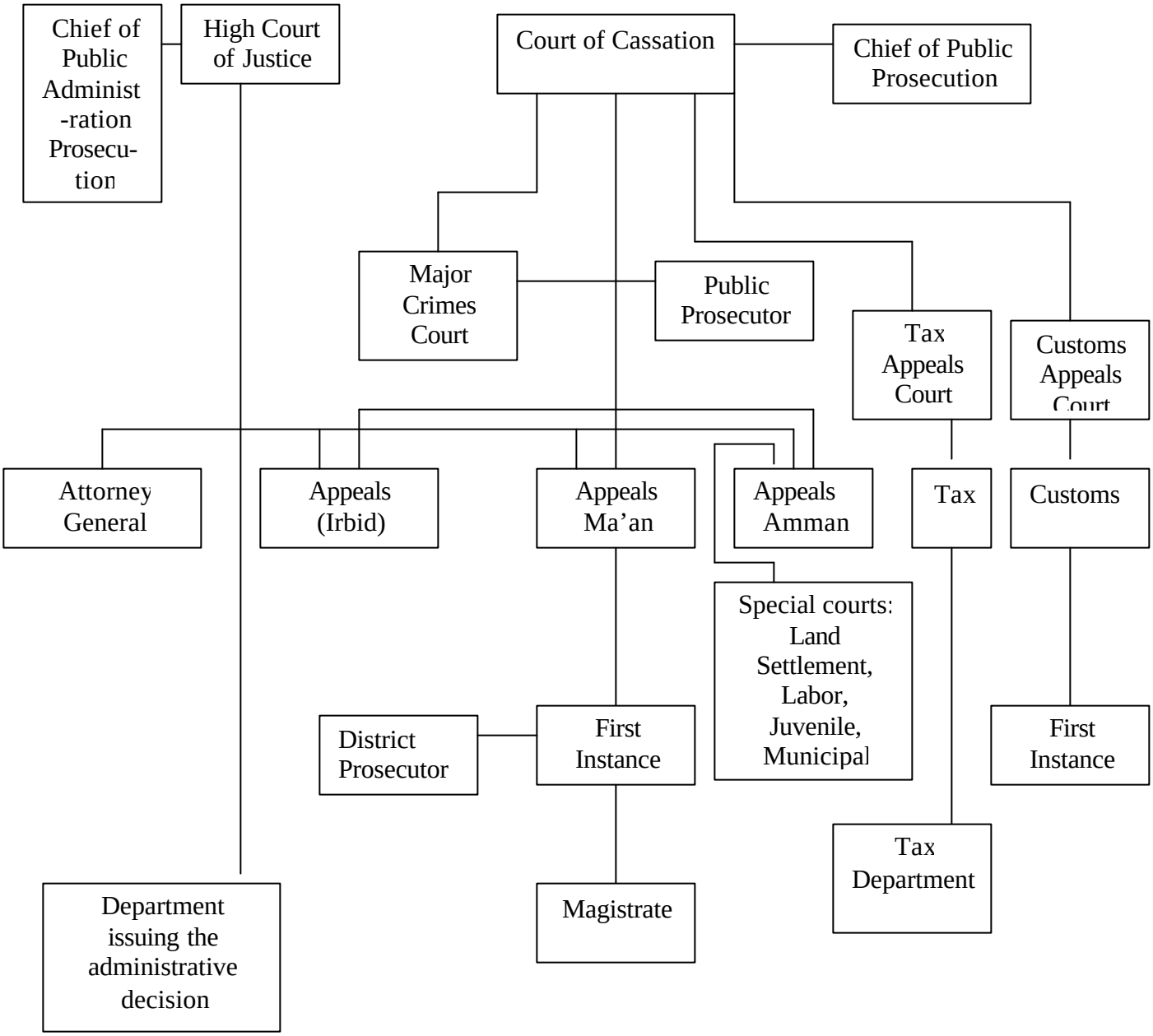
[42] Article 2 of the law. See also Senator Adeeb Halassa**, supra.**

[43] In Jordan, the prosecution files the charges and is in overall charge of the investigation, assuming many of the powers exercised by investigating magistrates in civil law countries.

[44] The Council must appoint this official, as well as his assistants, from the ranks of judges.

ORGANIZATIONAL CHART OF THE JORDANIAN JUDICIARY



2. Court Administration

The recognition that court systems can be made more efficient by the application of administrative and management concepts routinely used by the remainder of the public sector is of recent origin in the United States. Thus, it is not surprising that court administration is incipient in developing countries.

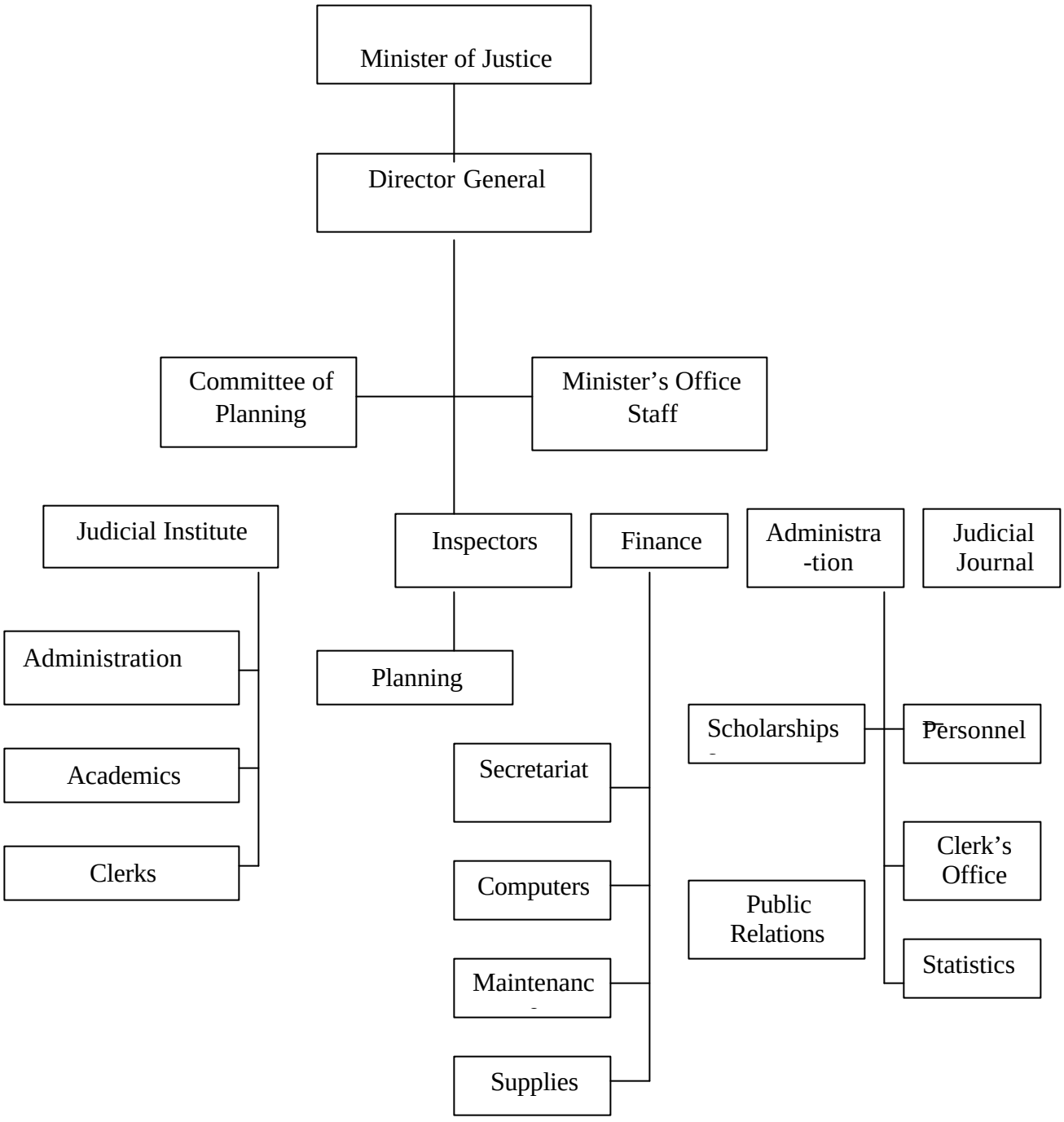
Growing caseloads and a popular perception of judicial systems as increasingly unable to dispense justice effectively or efficiently have brought court administration to the forefront of discussions of judicial reform throughout the world. Jordanian civil and criminal courts are encountering serious case backlogs, procedural congestion, and judicial delays with the resulting effect of inefficient, costly and unsatisfactory delivery of services. These delays contribute to the appearance of impropriety and public perceptions that the courts are unresponsive and incapable of processing the increasingly complicated economic and business disputes of the country as well as those of ordinary citizens.

The lack of effective court administration is reflected in archaic procedures, inadequate control mechanisms, duplication of effort, weak administrative and logistical support to the judges, and inadequate judicial statistics which fail to provide a complete picture of the problems and are of little use for improved court management and planning.

While there are elements of administrative systems at the national and regional levels and, to a lesser degree, at the local level, they are highly centralized. Some critics believe that administrative systems do not function well and are a cause of delay. Funding for the courts has normally been inadequate, because of the weak position they occupy relative to the other branches of government.

Because Jordan's system derives originally from the French system, it provides for a Judiciary that is independent in its judicial actions but totally dependent on the Ministry of Justice for all administrative and financial decisions and operational functions. The organizational structure of the Ministry has been criticized as being non-responsive to the needs of the institution even though it was recently restructured. We were informed that the Ministry is undergoing a reorganization review, but we could obtain very little information about the reach of this exercise. As reflected by the organizational structure, planning is not a critical function of the Ministry and in particular, decisions about current and future resource needs of the court system do not appear to be the product of a thorough planning process.

ORGANIZATIONAL CHART OF THE MINISTRY OF JUSTICE



Court administrative systems have generally been centralized with decision-making flowing down from the central authority. There are no regional administrative offices and all requests for supplies or personnel must be sent to the Ministry of Justice in Amman.

2.1. Financing the Judiciary

The funding for the Jordanian Judicial Sector in recent years has been static and the overwhelming consensus is that it is woefully under-funded. Nevertheless, last year, the judicial sector budget increased by JD 666,000, going from JD 8.229 million in 1998 to JD 8.895 million in 1999, an increase of 8.41%. In comparison, the national budget increased by only 2.43%, from JD 2.028 billion in 1988 to JD 2.100 billion in 1999. However, on closer inspection, it is clear that virtually all of the judicial budgetary increase was due to an increase in salaries. That factor accounted for 97.7% of the increase, with operational costs only increasing by JD 55,000.

There can be no more graphic illustration of the low national priority assigned to the civil justice sector than the budget accorded the Ministry of Justice for the Year 2000. That figure represents a mere 0.481% of the national budget. The total budget for the Government of Jordan is estimated at JD 2.21 billion (equivalent to approximately US$ 3.1 billion) while the estimated total Ministry of Justice budget for the same year is JD 10,630,000 (about US$ 14,882,000). Given the problems depicted in this report, by any fair measure, the Jordanian judicial sector is vastly underfinanced.

Table 2 presents the Ministry of Justice budgets for 1998, 1999 and 2000. Due to the large percentage of the budget consumed by salaries, 83.3%, very little is left for operational and capital costs of the judiciary. For example, only JD 36,000 is allotted for all equipment maintenance of the courts of Jordan. While this amount is plainly insufficient for the existing operations, should the Ministry's plans to automate all civil court operations be funded while retaining such a miniscule proportion for maintenance, the computers would rapidly fall into disuse. Acquisition of vehicles is another area in which there is a clear vacuum, with absolutely nothing allotted for 1999 or 2000.

Out of an annual budget of JD 10,630,000, more than 85%, or JD 9,050,000, is dedicated to salaries and personnel costs, with salaries of judges accounting for 49.8% (JD 4.47 million) of all salaries (JD 4.38 million). Another JD 200,000 is budgeted for Social Security contributions.

JD 847,000 is set aside for rents, utilities, repairs and maintenance for both the judicial operations and the administration. And lastly, the budget includes JD 15,000 for furniture and JD 15,000 for supplies and materials for the whole year, for the whole kingdom.

Ministry officials readily recognize that these amounts are inadequate to support the Ministry's requirements and they commonly run out of funds in these line items in the last

several months of the fiscal year, forcing employees to provide their own supplies. The Ministry also carries over substantial accounts payable amounts owed to other government entities. For example, an amount of JD 120,000 was due to the Ministry of Communications for telephone services, which had accumulated over a period of several years. Asked if such a debt might result in a cut-off of telephone services, Ministry officials concluded that it "would never happen."

In another anomaly, the Ministry is required to pay import duties for the acquisition of foreign equipment, assuming their budget would allow for such expenditure. In terms of equipment, the Ministry is in dire need of basic items such as calculators and photocopiers, not to speak of a serious deficit in computers. As an extreme example of the poverty of many units, we were informed that one of the Magistrate courts in the south of the kingdom had a photocopier, but it was in a state of total disrepair, and there was no repair budget. The nearest photocopying machine is in Ma'an, 45km away. Therefore, that court's personnel must travel 90 km. to photocopy court documents.

Asked whether adjustments could be made within the budget in order to meet other priorities that could increase productivity, e.g. separation of marginal employees versus acquisition of computers and/or office equipment, officials informed that "employees are not separated." It is also commonly understood that the government will always cover salaries. Hence, while government financial reformers may have the good will and intention to eventually provide the ministries with more room to maneuver within their budgets, in the final analysis, established custom may leave very little real room to adjust spending priorities within the assigned budgets.

On the positive side, in 1999, revenues from court fees amounted to approximately JD 12,000,000, all of which went directly into the national treasury. The entire Ministry of Justice budget for that year was JD 8,985,000. So basically, the Ministry and the court system are not only paying their own way, but are a significant profit center for the Jordanian government.

MINISTRY OF JUSTICE BUDGET FOR 1998, 1999 and 2000

Article	Actual 1998	Estimated 1999	Re-estimated 1999	Estimated 2000
Salaries,wages & allowances	6,839,277	7,440,000	7,260,000	8,850,000
Rents	180,619	210,000	210,000	210,000
Postage,telephone& telex	88,415	90,000	90,000	90,000
Heat,light & water	183,948	205,000	205,000	219,000
Equipment maintenance	28,546	36,000	36,000	36,000
Vehicles maintenance	10,839	17,000	17,000	17,000
Repairs and maintenance	18,764	26,500	26,500	26,000
Stationary and office equipment	43,854	64,000	64,000	65,000
Cleaning& other exp.	66,616	63,500	63,500	104,000
Insurance	4,864	10,000	10,000	10,000
Travel Exp.	25,778	30,000	30,000	30,000
Miscellaneous	42,485	40,000	40,000	40,000
Social Security	156,983	180,000	180,000	200,000
Training courses	-	60,000	60,000	-
Bonuses for others	600	3,000	3,000	3,000
Furniture	-	50,000	50,000	15,000
Machinery & equipments	9,941	10,000	10,000	15,000
Studies, research & consulancy	-	30,000	30,000	-
Vehicles	10,700	-	-	-
Lands and buildings (Purchase of a court building in Zarka)	500,000	400,000	400,000	400,000
New constuctions (Tafeela)	-	300,000	100,000	200,000
Maintenance and repairs	-	100,000	100,000	60,000
Furniture and fixtures	16,999	-	-	40,000
Total	8,229,228	9,365,000	8,985,000	10,630,000
MOJ Current expenditure	7,701,529	8,535,000	8,355,000	9,930,000
MOJ Capital expenditure	527,699	830,000	630,000	700,000

Source: National Budget of Jordan, Chapter 25, 2000.

2.2. Budgeting and finance

The government budget process in Jordan is rigid, highly centralized and closely controlled by the Ministry of Finance. The annual process begins with a Circular Letter issued by the General Budget Department (GBD) – an autonomous organization within the Ministry of Finance – to all line ministries, outlining the current economic situation of the kingdom and the necessity to live within certain parameters. The Circular Letter provides guidelines for the preparation of the new budget. In this case, the Ministry of Justice (MOJ), with the assistance of a budget officer from the GBD, prepares a budget based on projected needs and submits it to the GBD for review. Subsequently, meetings are held with the Secretary General of the Ministry of Justice to discuss and negotiate the budget, which is eventually approved as a final draft by the Ministry of Finance. A Consultancy Board, headed by the Prime Minister with representatives from the Ministry of Planning, the Ministry of Industry and Trade, the Central Bank and the Audit Bureau, reviews the totality of the government's budget which is submitted for approval in its final form to the Cabinet, then the Parliament (both houses) and eventually to H.M. the King for authentication.

If the budget preparation process gives little room for maneuver or advocacy by the individual ministries, the budget execution process is even more closely controlled. One difficult feature of the budget execution is that the Finance Ministry's rigorous control over expenditures gives little leeway to prior year obligations. No carryovers are permitted to allow for savings or reserves under the control of the executing ministry. Instead, each newly approved budget includes a line item entitled "Previous Commitments" which is closely controlled.

Currently, the budget implementation process is carried out from the Ministry of Finance through Yearly Release Advices and Monthly Financial Orders (Cash Ceilings) that are used to control the cash flow. An Economic Evaluation Committee made up of the Ministries of Finance, Planning, the Budget Department, the Central Bank and the Department of Statistics meets periodically to study the economic growth (GDP) and inflation. By mid-year, these evaluations become the basis for the formulation of the following year's budget.

The present financial management system has some important drawbacks, which the Finance Ministry appears to recognize and desires to overcome. As noted in the previous section, there are indications that the Government wants to improve upon the present cash-based accounting system, which leaves financial managers in individual ministries ill-prepared to anticipate expenditures ahead of time and to adjust cash management accordingly. In particular, it wants a built-in mechanism to translate its strategic choices into actions funded by the budget and a tool to assure that its choices are being followed through. The present system is characterized by a budgeting mechanism based on line items that does not reveal the purposes of the intended public expenditure. Finally, auditing is limited to financial auditing, and no performance auditing appears to be contemplated, giving no information as to whether the intended results of the Government activity have been achieved.

Officials of the General Budget Department asserted that the Government of Jordan is in the process of introducing financial management reforms, specifically program and performance budgeting as a response to the development challenges of Jordan. In terms of fiscal independence, with the introduction of performance budgeting, the line ministries would be given a certain budget allocation, all within the scarce financial resources, but would be allowed to establish their own priorities and at the same time given more room to maneuver. Should this materialize, it would also permit the MOJ to do a more thorough job of in-depth analysis to prepare and justify its own annual budget requests and present supporting documentation and argument to allow MOJ officials to confidently press their needs within the GOJ.

2.3. Accounting system & controls

If the current budget preparation process gives little room for maneuver or advocacy by the individual ministries, the budget execution process is even more closely controlled. One difficult feature of the budget execution is that the Finance Ministry's rigorous control over expenditures gives little leeway to prior year obligations. No carryovers are permitted to allow for savings or reserves under the control of the executing ministry. Instead, each newly approved budget includes a line item entitled "Previous Commitments" which is closely controlled.

2.4. Personnel management

Personnel are the greatest assets of any institution. This is especially so in the judiciary where the quality of the judges and support personnel determines the fairness of the system and the public respect and confidence in its fundamental conflict resolution function.

The court system consists of 2,184 employees distributed as follows: 22 Judges of the Cassation Court; 9 justices of the High Court; 58 Appeals Court judges; 9 Major Crimes judges; 4 Judicial Inspectors; 117 First Instance judges; 147 Magistrate judges; and 50 State Attorneys. Of the judges, only 7 are female, including 1 Appeals Court judge and 6 Magistrate judges. Nine hundred and thirty-one (931) clerks, 406 summons servers, and 428 court criers (bailiffs) assist these judicial officers. Judges complain that the number of court personnel has not grown proportionately with the rise in the number of cases and the population increase. Lack of personnel, especially judges, they complain, is a major cause of the delay that now plagues the courts.

TABLE 3

JUDICIAL PERSONNEL BY COURT LEVEL

Court	Judges	State Attorneys	Support Personnel
Court of Cassation	22	1 Chief and 1 assist.	931 clerks 406 summons servers 428 court criers (bailiffs)
High Court of Justice	9		
Major Crimes	9	4 Prosecutors & 3 Civil Attorneys General	
Appeals Court Irbid	14	1 Chief Attorney General and 6 Assistants	
Appeals Court Ma'an	3		
Appeals Court Amman	25		
Appeals Court Tax	12		
Appeals Court Customs	7		
Inspectors	4		
First Instance	114	34 District Attorneys	
First Instance Customs	3		
Magistrates	147		
Total	369	50	1,765

2.5. Salaries

Despite their being the highest salaries in the civil service, virtually everyone interviewed indicated dissatisfaction with the salaries of judges and support personnel. They claimed low salaries as a major cause of judges leaving the judiciary in favor of private practice. Many asserted that these low levels make some judges more susceptible to corruption.

Judicial personnel are compensated based on their personal grade, experience and length of service. The salary scale, as published in the Official Gazette of Jordan, No. 4386 dated 16 November 1999, is as follows:

- The two Chief Justices (the Chief Justice of the Court of Cassation, who also serves as President of the Judicial Council, and the Chief Justice of the High Court of Justice) are compensated at the rate of working cabinet ministers (currently JD 1,000 per month) plus a monthly representation allowance of JD 1,000;

- Higher level judges not in the above category receive a basic salary ranging from JD 800 to JD 900 per month plus an allowance of 100% of their basic salary;

- All other judges receive a salary and an annual increase, as follows:

GRADE	BASIC SALARY	ANNUAL INCREASE
SPECIAL	JD 610 – 700	JD 10
FIRST	JD 560 – 600	JD 10
SECOND	JD 510 – 550	JD 10
THIRD	JD 460 – 500	JD 10
FOURTH	JD 410 – 450	JD 10
FIFTH	JD 360 – 400	JD 10
SIXTH	JD 310 – 350	JD 10

Judges in the Special Grade receive an additional allowance of 80% of their basic salary. Judges in the remaining six grades receive an additional allowance of 60% of their basic salary.

All other Ministry of Justice personnel and court staff salaries are based on a regular Civil Service formula. Employees with a high school education fall in the "Third Category"; whereas employees with a college level degree are compensated based on "Category Two". It is our understanding that "Category One" is reserved for employees with a doctorate degree. All basic salaries are increased by a personal and family allowance of an average of 50%.

Apparently, promotions to higher levels are uncommon among administrative staff. Currently, the budget does not include any provision for personnel training, incentive awards and/or promotions other than the regular annual step increases granted to all employees regardless of performance.

2.6. Infrastructure

The Ministry recently completed construction of the new and imposing Palace of Justice, which stands as one of the largest and most modern public sector buildings in the capital. Previously courts were spread throughout the capital and lawyers were compelled to travel from

one site to another to check on cases or appear at hearings. The Palace now houses all courts in Amman and this centralization of services at a site accessible to the public and lawyers, and within easy distance of the police services has been a major improvement in the courts.

In addition to the Palace, the Ministry owns the court buildings in Ma'an and Irbid. All other 34-court buildings are leased with inadequate facilities to meet court needs.

2.7. Information systems

Every modern organization today needs an information system that facilitates and speeds operations, provides statistics and facts to allow management decisions to be made on an informed basis, and permits the communication of its mission and performance to outside entities or the public. The Jordanian civil courts and Justice Ministry are at a very rudimentary level in this crucial area, with the courts in particular remaining nearly unserved by computers.

While the *Shari'a* courts have recently been computerized, the ordinary courts still rely on handwriting as the basis for their information system. All court transcripts and record entries are written by hand, which leads to errors due to illegible handwriting and photocopies. Computers are available only for court finance, court registries and statistics.

The Ministry of Justice recently completed a feasibility study for the computerization of the courts (See Attachment B). The consultants prepared a plan for automation with an estimated cost of JD 1,235,000 ($US 1,605,000) Should the central government approve this purchase, the Ministry will require a substantial increase in their equipment maintenance budget, which currently stands at JD15,000 ($US 19,500) annually for the entire court system.

2.8. Planning

The absence of systematic planning and performance evaluation has been a common characteristic of justice sector agencies in many countries. With the increasing complexity of the matters coming before them, court systems in ever more countries have now formally adopted systematic and professional planning. Courts must plan for systematic expansion of personnel and budgets, specialized judicial and personnel training in accord with new or anticipated legislation, expansion of services and construction of facilities to respond to population growth, and other identifiable demands on their services. Thus, every effort designed to improve the administration of justice should set forth clearly identifiable and measurable goals and define the means by which they are to be reached, including through the installation of professional research and planning capacity in system institutions. In Jordan, this element will become even more important as the national budget and accountability process shifts to a performance-based system in which budget allocations will depend on each agency's ability to achieve predetermined measurable goals. Determination of these indicators is difficult enough for most public service agencies. It is even more difficult for a court system, whose ultimate goal is fair, just, speedy, and consistent application of the law.

While the Judiciary suffers from a serious lack of resources of all kinds, the effective use of existing resources is hampered by the virtual absence of a mechanism for planning and evaluation. Expenditures are made on an ***ad hoc*** basis, with little attempt to identify priority areas of need for the court system. As noted, for example, new courts and decisions on increases and shifts of personnel should be based on reviews of population shifts, caseloads (both current and projected), estimations of government revenues and expenditures, and other factors. They are presently made based on intuition, anecdotal evidence or political considerations.

Planning does not appear to be a priority area for the Judiciary and there is some confusion of roles as the director of the planning unit also occupies the role of chief of the inspector general's office, a function totally unrelated to planning. Additionally, support offices that one would normally find under the planning unit currently report to other units. For example, the statistics office reports to the Office of Administration and appears to have no direct linkage to the Planning Office.

The current planning document for the Judiciary consists of two pages (See Attachment A) and simply presents a wish list without any justification, staging, costs, or evaluation mechanisms. There appears to be no vision document that outlines the goals of the justice system, specifies the manner in which those goals will be realized, identifies obstacles, costs out the improvements, or establishes methodologies to evaluate progress toward their achievement.

2.9. Statistics

Judicial statistics are the basis for any sound court planning and administrative system, providing basic data to support conclusions on present performance and to project future development. Court statistics are divided into summary statistics and case tracking statistics. Summary statistics are those that present aggregate data on the number of cases that have entered the system, the number disposed of and the number of cases pending. Case tracking statistics focus on the progress of individual cases through the system.

All courts in Jordan are required to forward monthly case movement statistics to the Ministry of Justice. This data is compiled into tables that show the number of cases filed, resolved, or carried over for the same period. Regular evaluations of the reliability of the statistics forwarded to the Ministry do not appear to take place. The limited nature of the aggregate data reported, without any analysis, results in a system whose utility for planning and evaluation purposes is almost zero.

Judges expressed skepticism as to the merits of the statistical system. Some complain that it does not properly reflect caseloads and that the present reporting system does not take into account the widely varying complexity and diversity of cases processed.

2.10. Caseloads and case management

While comparative sizes of populations to be served are one means to determine court resource needs, they do not necessarily determine demand since a much smaller population may be more litigious than a larger one. In 1998, for example, First Instance Courts received 92,260 cases and closed 106,029 cases. The bulk of cases were handled by courts in Amman accounting for 40% of cases filed and 44% of cases resolved.

Caseload comparisons may also be useful in evaluating judicial performance. The number of cases resolved per judge in 1999 was 179 for the Cassation Court (3,930); 683 for Appeals Court judges in Amman (17,070); 639 for judges in the Appeals Court in Irbid; 93 for the Customs Court of Appeals; and 3,044 per First Instance judge. Of course, the numbers of matters resolved do not consider the simplicity or the complexity of the matters or the quality or correctness of the final ruling. In addition, since panels of judges must resolve many of these cases, one must multiply many of these average caseloads by the number of judges on the panel to accurately determine individual judicial caseloads.

Variances between different courts may also be found in units within the same court level. Thus, for example, the average number of cases resolved per judge in the First Instance courts in Amman was 2,946 while all first instance judges resolved 3,089 cases per judge. The greatest variances are found in the Magistrate courts with one court receiving only 278 cases while others range in the thousands.

The solutions proposed to curb the growing number of pending cases and the resultant processing delays have been largely the creation of new courts or the adoption of emergency measures.

Studies carried out in other countries have shown that simply increasing the number of judges or shifting their jurisdictions does not necessarily solve the problem. It would take, for example, several times the number of current judges, working for a number of years to clear the current dockets, assuming no growth in the number of current cases filed annually.

Since there is no accurate data on the way in which cases are processed and possible bottlenecks, the only approximations that can be made are based on anecdotal evidence. The general opinion, however, is that a great deal of courts' time is spent on ministerial duties that could be resolved by better case management. For example, the ISDLS study found that "Approximately seventy-five percent of in-court time before the judge or judicial panel is dedicated to routine and ministerial functions in the preparation stages of the case, such as recording the acceptance of various forms of submitted evidence and the hearing of witnesses."[45] This led them to conclude that delegation of many of these functions to support

[45] Undated and untitled Report from ISDLS, p. 3, (1999).

personnel could free the judge's time considerably to devote himself to strictly judicial decisions.

Under the current system, lawyers largely control the process with the judge being a passive figure in the control of his caseload. This permits lawyers to utilize numerous dilatory techniques resulting in unnecessary hearings and motions that could easily be resolved more expeditiously.

TABLE 4
CASE MOVEMENT FOR ALL COURTS IN JORDAN
BY QUARTERS FOR 1999

	FIRST QUARTER		SECOND QUARTER		THIRD QUARTER		FOURTH QUARTER		OVERALL TOTALS	
	Filed	Resolved	Filed	Resolved	Filed	Resolved	Filed	Resolved	Filed	Resolved
Courts										
Cassation	1,057	947	1,546	992	1,220	1,047	1024	944	4,847	3,930
Appeals Amman	3,749	3,756	4,242	4,319	4,723	4,441	4383	4554	17,097	17,070
Appeals Irbit	1,166	1,836	2,461	2,525	2,393	2,368	2210	2221	8,230	8,950
Customs	94	182	250	253	150	114	147	101	641	650
Tax Appeals	833	846	1,068	1,197	1,036	606	1024	1191	3,961	3,840
Major Felonies	230	238	387	268	241	167	221	220	1,079	893
1st Inst. Amman	21,996	22,810	27,268	48,383	22,657	16,759	20339	18087	92,260	106,039
1st Inst. Irbit	15,747	26,439	13,596	18,769	9,783	6,849	17542	14186	56,668	66,243
1st Inst. Kerak	2,631	2,995	8,610	8,397	5,229	4,279	1024	1048	17,494	16,719
1st Inst. Salt	2,017	3,307	2,162	3,357	2,287	1,878	2228	1514	8,694	10,056
1st Inst. Ma'an	1,705	1,585	2,562	3,461	2,957	3,071	2775	3597	9,999	11,714
1st Inst. Zarka	13,176	14,761	11,770	16,161	14,914	13,348	12109	11098	51,969	55,368
1st Inst. Aquaba	2,246	2,474	1,846	3,540	1,924	1,560	241	195	6,257	7,769
1st Inst. Tafelieh	3,196	3,802	1,442	1,549	2,195	2,034	7550	1528	14,383	8,913
1st Inst. Mafrek	4,232	4,986	5,297	6,073	5,868	4,770	3223	3174	18,620	19,003
1st Inst. Madabah	3,369	2,945	4,019	4,001	3,482	2,555	4062	3005	14,932	12,506
1st Inst. Jerash	3,492	3,229	3,853	3,668	5,720	4,945	3047	1660	16,112	13,502
1st Inst. Ajloun	6,261	8,789	3,124	2,953	3,908	3,324	3731	3185	17,024	18,251
1st Inst. Customs	279	207	322	323	240	155	1696	237	2,537	922
Total Amman 1st Instance	21,996	22,810	27,268	48,383	22,657	16,759	20,339	18,087	92,260	106,039
% Amman	38%	30%	47%	67%	39%	34%	35%	41%	40%	44%

TABLE 4

CASE MOVEMENT FOR ALL COURTS IN JORDAN
BY QUARTERS FOR 1999

	FIRST QUARTER		SECOND QUARTER		THIRD QUARTER		FOURTH QUARTER		OVERALL TOTALS	
	Filed	Resolved	Filed	Resolved	Filed	Resolved	Filed	Resolved	Filed	Resolved
Mag. El Kowra	551	1,475	416	403	586	586	674	674	2,227	3,138
Mag. El Ramtha	622	967	713	633	881	647	3223	3451	5,439	5,698
Mag. North Aghwar	2,071	2,635	2,360	1,996	2,872	2,295	2349	1980	9,652	8,906
Mag. Wadi El Sir	1,344	1,876	1,701	1,575	1,647	1,253	1654	1467	6,346	6,171
Mag. Mazar South	514	1,692	540	543	645	505	548	487	2,247	3,227
Mag. Beni Kanana	1,152	1,567	750	721	1,945	1,691	3382	3503	7,229	7,482
Mag. Al Rasifah	2,772	2,188	8,313	9,103	3,527	3,071	3612	3048	18,224	17,410
Mag. Sweileh	664	750	985	2,564	1,044	914	883	756	3,576	4,984
Mag. Al Kasr	168	215	481	594	1,220	1,237	431	424	2,300	2,470
Mag. Shounah South	79	60	132	123	153	134	111	137	475	454
Mag. Dir Ala	475	571	404	406	333	270	434	477	1,646	1,724
Mag. Sahab	750	901	853	822	875	745	1571	1463	4,049	3,931
Mag. Al Mowakar	911	1,230	643	580	801	682	687	581	3,042	3,073
Mag. Al Shoubek	230	258	251	490	243	148	191	142	915	1,038
Mag. Wadi Mousa	1,471	1,641	1,539	1,561	1,185	1,184	1106	1068	5,301	5,454
Mag. Ghour El Safi	103	120	106	97	208	193	182	150	599	560
Mag. Na'our	2,024	2,478	2,280	2,298	4,081	3,813	3121	3079	11,506	11,668
Mag. Dhiban	2,095	2,159	1,693	4,516	2,138	2,030	2108	1745	8,034	10,450
Mag. El Hosseiniyah	3,098	3,045	4,274	4,387	2,783	2,749	2192	2183	12,347	12,364
Mag. 'Ay	96	95	256	128	257	107	127	378	736	708
Mag. Al Azrak	31	51	101	116	98	84	48	48	278	299
Mag. Ein El Basha	0	0	0	0	0	0	0	0	0	0
Mag. Al Rweishad	113,849	140,955	131,686	170,500	126,099	105,173	127016	108719	498,650	525,347
Land Settlement	0	0	0	0	0	0	0	0	0	0
Govt. Property	0	0	0	0	0	0	0	0	0	0
TOTAL MAGISTRATE	135,070	166,929	160,477	204,156	153,621	129,511	155,650	135,960	604,818	636,556

Source: Ministry of Justice, 2000.

Recently, there seems to be a trend toward a more activist management role by certain Chief Judges. Since the beginning of the current court term of the Amman First Instance Court in September 1999, the Chief Judge has used his supervisory authority to take the following measures aimed at more efficient judicial function.

- Assigned 9 of the 33 judges to hear commercial matters exclusively. These are now handling all matters dealing with banks, insurance, companies law and the like. There were formerly 1000 cases pending in this category, now reduced to 400. Cases now pending date back only to1998 and are said to be moving well. The rest of the pending civil docket has also begun to move better as a result of the removal of these more complex matters.
- Assigned 2 judges to handle all matters involving executions of judgments. These matters were formerly spread among all the judges.
- Assigned 2 judges to hear all criminal misdemeanor cases, also formerly spread out among all judges.
- Assigned all serious non-major crimes to two panels of three judges each. There are now 1,300 such cases pending, which is a significant reduction.
- Assigned 2 judges to handle all cases involving landlord-tenant disputes, of which there are presently 600.

The Chief Judge of the Amman First Instance Courts also uses the monthly compilation of statistics on new cases, pending cases and resolved cases, organized according to individual judges caseloads, to make decisions on case assignments.

The Chief Judge, a member of the Judicial Board, commented that despite the efficiency measures he has instituted, the judges remain with a caseload of 30-50 matters daily, and must take work home in order to try to keep up. His view is that the only thing that will make a substantial and significant impact on the caseload is major additional financial and human resources. While he is in favor of the movement toward insertion of a pre-hearing Case Management procedures like those advocated by the Jordanian Legal Study Group (JLSG), he believes that new legislation and additional judges will be needed to effect any such change.

It should also be noted that all of the measures instituted by the present Chief Judge are entirely discretionary, and a new Chief Judge could decide not to continue them, regardless of their eventual demonstrated efficacy.

2.11. Service of Process and Notifications

Service of process is a critical stage of any judicial proceeding since its accomplishment is a prerequisite to the initiation of the action. All of the persons interviewed complained about the inefficiency of relying on a small group of court officials who, with low salaries and no transportation, are responsible for serving parties. This leads to errors in service some of which can either delay or jeopardize the cases. Lack of supervision of these officials allows service to be largely managed by the affected attorneys who are oftentimes compelled to “tip” the server, and/or supply transportation as well as accompany him to ensure that it is completed.

Once service is completed, lawyers are notified of judicial decisions and scheduling of hearings by means of entries into the court's record. As a result, lawyers are compelled to visit all of the courts where their cases are pending to ascertain its status and receive notifications. Although centralization of courts in one Amman building has reduced the burden on lawyers, this still consumes a great deal of their time.

3. Judicial selection and Training

Careful and serious methods and criteria for judicial selection are fundamental to the eventual strength and proficiency of any judiciary. There are four general mechanisms used for judicial selection in most of the world: popular election, appointment by the executive, selection by the legislature, and appointment by the judiciary itself. Within these models, there are numerous variations. One of the most important changes in the judicial selection systems is the introduction of judicial selection through a merit system implemented by an independent body. Jordan has adopted this system by establishment of a Judicial Board charged with most personnel decisions affecting judges.

3.1. Judicial Selection

Judges and State's attorneys (both criminal and civil) are selected under a merit-based system akin to civil service. While judicial support personnel are part of the national civil service system, judges have their own system administered by the Judicial Council.[46] The President of the Cassation Court is the only judge exempted from the judicial career system and the King selects him.

Lawyers who pass an entrance examination for judicial positions must undergo a two-year training program at the Judicial Institute. Judges have complained that the curriculum at the Institute is too long and overly theoretical. This new program is similar to the French practice and replaces the previous system whereby judges were expected to have worked as law clerks in the courts prior to being appointed to the Judiciary.

Unlike other countries in which judges are selected for fixed terms of office, Jordanian judges are selected to unlimited terms. A retirement system is available to them and judges must retire by age 68 except for Cassation Court judges who may serve until age 72.

As mentioned earlier, the Judicial Council makes most personnel decisions affecting judges. The Board is composed of 10 members: the Chief of the Cassation Court who serves as its President; the Chief Judge of the High Court who serves as the Vice-President; the head of the Public Prosecution Office of the Court of Cassation, the 3 presidents of the Courts of Appeal; the Senior Inspector of the Ministry of Justice; 2 senior judges of the Court of Cassation; and the president of Amman Court of First Instance.

[46] Law No. 49/1972. Attendance of at least seven members is necessary for a quorum and decisions are by absolute majority.

The Board is charged with the selection of all members of the judiciary. For judges at the magistrate level, the Board requires that all applicants possess two years of experience in the practice of law; pass an entry examination and attend training at the Judicial School for two years. First Instance judges are required to have 7 years of experience as attorneys and are usually selected from within the ranks of the Magistrate Courts although outstanding lawyers and/or members of law faculties may also be selected. Appeals Court judges must meet a requirement of 10 years of experience while Cassation Court members must have practiced law for 15 years. In either case, the members of these courts are selected by the Board from the ranks of senior members of the Judiciary or outstanding lawyers and/or members of law faculties.

3.2. Judicial Training

The Judicial Institute of Jordan[47] conducts training for all new judges and also provides courses and seminars for judges already in service. The Institute is presided over by a board composed of the President of the Court of Cassation, the Minister of Justice, the head of the Public Prosecution Department, the Chief of the Bureau of Legislation, the Dean of the Law Faculty at the University of Jordan; the president of the bar association, and a high ranking judge named for two years by the Minister of Justice. The Minister of Justice presides over the Board. The Cabinet, upon the recommendation of the Minister of Justice, appoints a Director General to oversee the Institute's operations.

The program for new judges is a two-year, 50 hour course, combining classroom lectures, seminars taught by judges on practical application of the laws studied, and periods of apprenticeship with judges in the courts.

Year One consists of 25 hours of classroom study, with the first semester spent learning the codes and legislation, and the second semester on practical application sessions. Recently they have added four months of experience in the courts in the second semester.

Year Two is spent full-time in the courts as apprentices to the judges. The student must also produce a major research thesis in order to graduate.

The Institute occupies a four-story building housing several well-equipped classrooms, lecture halls and a well-stocked library. There are two computer laboratories, the entire facility is computerized with an internal network, and there is now a recent additional requirement that trainee judges must become computer proficient in order to graduate. All classrooms have ample audio-visual equipment, including overhead projectors and video, and the main conference room holding about 80 persons also has a simultaneous translation booth. There is also a moot courtroom for practice trials. The Ministry of Justice pays all costs of the training, and the new judges also receive a salary during the two-year training period.

[47] The Institute was created by the Law of the Judicial Institute, Law No. 3/1988. The first competition for admission was held in 1989 with the admission of 30 candidates. By 1997, the Institute had graduated seven classes with 225 graduates. This included 23 military judges and 29 members of the police force. Ministry of Justice, ***Judicial Institute of Jordan***, 1987.

Teaching staff is drawn from leading judges, law professors, and practicing attorneys from Jordan and other Arab countries. Under a cooperation agreement with the French Government, lecturers from the French Judicial School in Bordeaux come periodically to teach at the Institute. There are also cooperation arrangements with Judicial training entities in Egypt and Tunisia and judges from other Arab countries have attended Institute training events.

The Institute also offers seminars and short courses for sitting judges on legal topics of current interest. Judges attend voluntarily and there is no credit toward the judge's annual evaluation or for promotion given, though the Institute's Director believes that this should be established. At present, the focus is on Intellectual Property law and the WTO accession context for the upcoming in service course, which is being offered in cooperation with the World Intellectual Property Organization (WIPO).

3.3. Judicial Discipline, Evaluation, and Promotion

All judges are subject to an annual evaluation by the Judicial Board, and are entitled to receive a copy of the evaluation and to challenge it before a panel of the Judicial Board if they disagree with their rating. Judges are rated based on the review by the Chief Judge of the court on which they serve and the Judicial Inspection Office of the Ministry of Justice. Their handling of their caseloads expeditiously, the clarity or correctness of their rulings and their understanding of the laws, are all taken into account. Ratings are: average, below average, and above average. A rating of above average is necessary to be promoted to the next pay classification. Judges must wait a minimum of three years to be promoted to the next level. According to our interviewees, most judges are promoted on time. However, there are said to be cases where judges who are perceived as not cooperating with certain unwritten directives and suggestions as to how to comport themselves in certain matters receive a low rating or are transferred to an undesirable location.

VII. Intellectual Property Protection And Administrative Procedures

Much of the World Trade Organization legislative reform effort was devoted to a reform of Intellectual Property legislation. While these recent reforms changed the substantive law dealing with intellectual property, as yet nothing has been done to improve the judicial and administrative systems that will be required to enforce them.

Responsibility copyrights lies with in the National Library of the Ministry of Education and Culture while trademark and patents are the responsibility of the Directorate of Industrial Property Protection at the Ministry of Trade and Industry.[48]

The IP protection Directorate has a well-established administrative procedure for challenges to trademark and registrations. Upon presentation of the application, a registrar reviews the trademark application and compares it against a computerized database of trade

[48] It should be noted that a decision was taken to award supervision and registration of plant varieties to the Ministry of Agriculture over the protestations of the law drafting group.

names, but the marks themselves are reviewed and compared manually. Currently, the IP Directorate does not have the software program, readily available from WIPO, to facilitate the examination and comparison of marks. The application is published in the Official Gazette and challenges must be presented within 90 days of publication. Challenges must be presented through counsel and the challenge must be substantiated. The period allowed for challenges is extended by three months. All challenges are forwarded to the applicant who must respond and present any contrary evidence.

An administrative hearing with the Director of the office is scheduled and all parties are allowed to present evidence. If the applicant is denied the registration, he has a period of 20 days within which he can appeal to the High Court of Justice. Challengers have 30 days to appeal. The appeal is against the director of the registry and the other party. Upon the filing of an appeal, the other parties have two weeks to reply. The hearing is held before a panel of 5 High Court judges.

The office receives approximately 5,000 trademark applications annually with 20% of them being refused. About 100 decisions are appealed annually.

In contrast to trademarks, the amount of patent applications received annually is very small and the internal procedure is similar to that of trademarks. Office officials readily admit that should the amount of applications increase substantially or should they involve complex technical issues they may be compelled to forward the application for review by experts outside the Jordan with the applicant assuming the costs. Some questions have been raised about the sustainability of this procedure should the expert's opinion be challenged in a subsequent court case in which he/she may not be able to travel to Jordan. Should this occur, it is likely that the trial court may be compelled to overturn the decision of the registrar since the absence of the expert runs contrary to the plaintiff's right to question him/her.

Holders of patents, trademarks or copyrights who feel that their rights have been infringed may take the matter to court. In a civil case for damages and an injunction, the matter will likely come before a First Instance Court based on the amount likely to be in question in most cases. Should the holder make a criminal complaint against the infringing party, the matter will go before a Magistrate's Court and all civil damages will be joined with the Magistrate's Court having primary jurisdiction over both.

VIII. ATTORNEYS

There are 4,513 lawyers in Jordan with an approximate median age of 30 years of age. This number results in a rate of 0.99 lawyers per 1,000 population. Sixty-six per cent (3,000) of all lawyers are concentrated in Amman, an additional 16% (700) in Irbid, 9% in Zarka (400) and the remainder is spread throughout the country.

Lawyers tend to be men (87%) although there has been a substantial increase in the number of women enrolled in the law faculties in recent years. The University of Jordan continues to graduate the largest percentage of lawyers with 1,200 students being currently

enrolled there.

Membership in the bar association is a requirement for legal practice. Law students complete a 126-hour curriculum, which takes approximately 4 years of study for graduation. For admission to the bar, all graduates must serve a two-year apprenticeship with a practicing attorney, prepare a paper on a legal subject (almost a mini-thesis), and pass an examination administered by a panel of three examiners. While there was near unanimity among persons interviewed on the need to acquire practical experience prior to bar admission, there were some concerns that the apprenticeship served was insufficiently supervised by the Bar.

Regulation of the profession is exercised through the Bar's Disciplinary Council, which reviews complaints against lawyers and recommends disciplinary action to the Bar Council. Approximately 200 complaints are examined annually and an average of 10 lawyers are expelled annually. The bar association operates a number of continuing legal education programs and has little relationship with the law faculties or the Judicial Institute.

At the core of any legal system is the basic education received by the legal professional prior to entry into the practice of law. There are at least 12 law faculties in Jordan.[49] The University of Jordan is the largest, most prestigious, and most exigent for admission. There is a nearly unanimous perception that the growth of private law schools has seriously undermined the quality of legal education and may eventually saturate the market for lawyers in the country.

Legal education is characterized by: 1) a lack of adequate funding levels; 2) over reliance on texts written by instructors; 3) a lecture system with little class participation; 4) poor library resources, with budget restrictions leaving collections outdated; 5) insufficient attention to practical legal skills or legal research techniques. However, a recent program has created a computer laboratory at the University of Jordan law faculty, which has begun to provide basic skills training and Internet access to students. Many lawyers attend postgraduate courses leading to LL.M. degrees in Jordan or abroad (primarily Lebanon, Egypt, Morocco, England, France, and the United States). Taking into account the two-year apprenticeship requirement of the Bar and the other bar-related requirements, it can be said that Jordanian legal education requires approximately six years, with the first two attended at a law faculty, and the last two supervised by the Bar.

The law schools play a minor role in continuing legal education. The law faculties have almost no involvement in training of justice officials.

Research into problems affecting the justice sector is also notably absent from the law school environment. Curricula typically concentrate on traditional legal topics with little attention devoted to social, political or administrative issues affecting the justice system.

[49] Jordan Universitry, Yarmuk, Mu'tah, Irbid, Farrash, Applied Science, Amman, Al Zaytouoneh, Al Asrã, Al Zarka, Filadefia, and Al-Abet.

IX. CIVIL PROCEDURE

1. Court Procedure: the governing framework

Jordan's Code of Civil Procedure (1988) sets out the requirements and procedures for filing, hearing and enforcing lawsuits in civil and commercial matters. It describes the jurisdiction and venue of the courts and the process for notification of the parties to a case.

Under the Code, a person wishing to commence a lawsuit must file his allegations with the court registry, including the name and address of the defendant, all of the evidence that he wishes the judge to consider and a list of all witnesses he plans to call in support of the case. The matter is registered and the clerk of the court gives an order to a process server to notify the defendant of the lawsuit. Once notified, the defendant has 15 days to submit his pleading in response to the plaintiff. The defendant's pleading must contain all evidence in his favor and the list of witnesses he proposes to call in his defense. The plaintiff has the right of reply to the defendant's response.

The court sets a date for a hearing three days after the defendant's pleading is received. As the matter proceeds, the parties may ask permission of the judge to submit additional evidence, which the court may allow in its discretion. The court will allow time for the parties to inspect and review one another's evidence.

According to the Code, postponements or continuances should not be granted for more than 15 days each time, and a hearing may not be postponed more than once for the same reason. Once the matter is heard, the court must issue its ruling within 30 days after the closing arguments.

2. The Reality of Jordanian Litigation

The contrast between the rules set out in the code and the manner of their application in practice is one of the principal causes for unnecessary delay in the resolution of cases in the Jordanian courts. The problem of delay begins immediately, with the process of notification of the defendant party of the initiation of a suit against them, and continues throughout the litigation, since the notices of various rulings of the court must be served personally on the parties.

The process-servers, court staffers whose task it is to accomplish service of process (notification), are the lowest paid employees. They must find the defendant party and personally hand them the notice of the court to appear and defend against the complaint. These individuals are not provided with means of transport and must use public busses or other ways to arrive at

the address provided to the court by the complainant. In many cases the interested party or their lawyer arranges and pays for the transportation of the process server. If they arrive and find the person is not present, or does not live at that address, they must return and try again another day. If the address provided is not correct or the person sought has moved, they so inform the court and the matter is continued while new information is obtained from the plaintiff and another attempt is made, until the person can finally be notified.

However, the process servers are susceptible to influence and are easily induced to serve or not to serve notice or to delay the service, depending upon the stipend offered by the interested party. Thus, at the initial stage of all legal proceedings, simple or complex alike, there is complete dependence on the efficiency and honesty of these minor functionaries. The plaintiff's attorney must go to the courthouse each day or send a representative to see whether the notice of successful service on the opposing party has yet been accomplished.

Once served, a defendant must seek a lawyer, who will likely ask and receive additional time to prepare an adequate response. As the parties prepare their cases, they will typically seek and receive several more continuances and postponements before an actual hearing on the merits can be held. While there are of course some quite legitimate reasons for seeking further continuances, many attorneys specialize in filing such requests simply to delay the matter. The phenomenon of course is not confined to Jordan, and is found to a degree in court systems around the world. However, virtually all of our interviewees stated that the Jordanian judges are far too lenient in granting postponements and rarely, if ever, act to sanction lawyers for failure to meet deadlines.

3. Conduct of Hearings

In the formal evidentiary hearing, the judge questions all witnesses and dictates his summary and characterization of the testimony to his clerk, who handwrites it into the record. The lawyers for the parties may ask to have their comments or objections noted on the record as well, but no verbatim testimony is recorded. Both the clerk and the judge must sign each page of the resulting record.

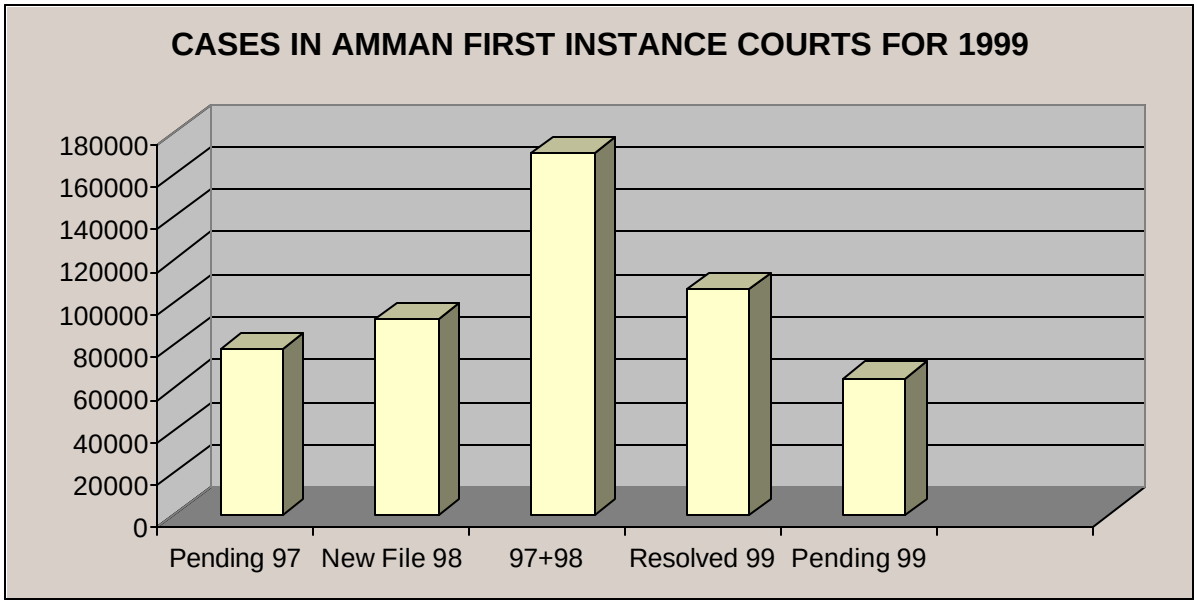
These laboriously handwritten proceedings, rulings, and decisions of the lower courts are not published, but are simply filed in the folder for each case. If a lawyer or a party wishes to photocopy a ruling or a portion thereof, he may do so only on certain days and only with permission of the chief judge. The difficulty in understanding the handwriting of the clerks and the sometimes-poor quality of the photocopies present additional frustrations and obstacles to the process.

The same clerks who write the record also register cases, collect judicial fees, and perform other administrative tasks. They are civil service employees of the Ministry of Justice.

4. The Caseload Factor

Virtually all of our interlocutors, both lawyers and judges, commented on the pernicious effects of the overwhelming number of pending cases in the courts. At the Magistrates courts

and the First Instance courts, it is common for a judge to deal with from 30 to 50 matters daily. The courts are in session from 9:00 a.m. to about 2:00 p.m., effectively functioning for only about 5 hours per day. To move a matter along, judges commonly cut off lawyers and witnesses and try to end a hearing as fast as possible, often taking only a few minutes per matter. This pressure and rush to complete one matter and move to the next hardly permits reflective judicial consideration of the merits in most matters, and certainly not in major commercial cases. In this atmosphere, the adequate handling of complex civil and commercial litigation becomes almost impossible. Often it is easier to grant a continuance or postponement in a matter just to move it off the day's docket than to insist on moving ahead on the merits.

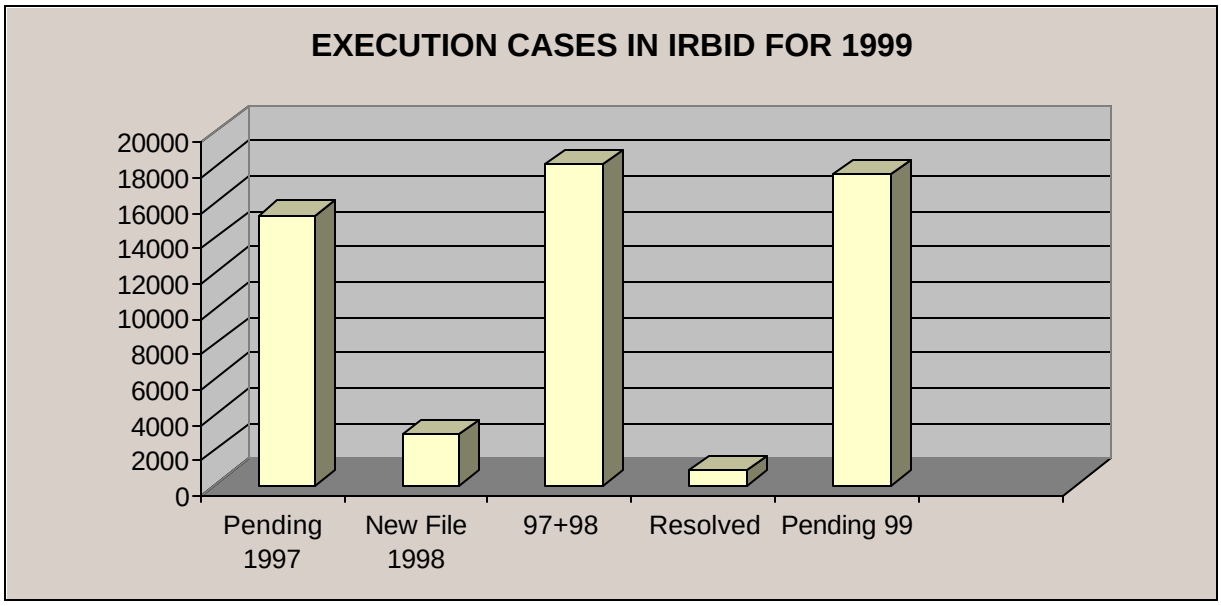


Source: International Business Legal Associates, Amman, 2000.

5. Execution of Judgments

The responsibility of carrying out the decisions of the courts is assigned to a Department of Execution staffed entirely by administrative employees of the Ministry of Justice. This entity receives the folder and issues the directions of the court to the parties. Normally, the most frequent sort of decision to be executed is for the losing party to pay a money judgment to the winning party. This stage is also the one that takes the longest, with months and often years passing before the losing party can be made to honor the decision of the courts.

The fundamental problems here seem to be a lack of efficiency and organization, a huge number of cases to execute, and a failure to exercise effective supervision and control. The Chief Judge of the First Instance is the direct supervisory authority over executions. In a recent development responding to the problem, the Amman Chief Judge has assigned two judges full time to handle all execution matters.



Source: International Business Legal Associates, Amman, 2000.

6. Post-judgement Remedies

An appeal is a review remedy that challenges final orders of a lower court. Normally, an appeal action looks only at the facts on the record in the lower court, and only in very narrowly limited circumstances may an appellate court admit or consider additional factual evidence. However, according to Jordanian lawyers, the Courts of Appeal often ignore this limitation and will typically review any facts presented in the lower court as well as new ones offered by the parties, effectively reopening and retrying the matter. The consultant team observes that, absent verbatim records of testimony and with only handwritten summaries of lower court matters and decisions, this practice is more understandable, if still wasteful and duplicative of judicial time.

Cassation is the most frequently used appellate remedy to review final sentences. It is traditionally addressed to errors of substantive law that may give rise to a reversal, affirmation or modification of the original sentence. There appears to be more disciplined approach at the Court of Cassation level than at the Appeals Courts.

There is a high rate of appeals in the system[50] from lower court decisions, with a large proportion of these being appeals from non-final (interlocutory) orders. Such appeals, which require a suspension of the lower court action to await the outcome, are often tactical moves by lawyers seeking to delay the resolution of a matter, and reform efforts to speed up court

[50] ISDL concluded that 80% of cases are appealed. ISDL, ***supra***.

procedures in most countries have severely curtailed them. However, in Jordan, while their use is ritually deplored, there has been little effort as yet to control and reduce them, much less eliminate their availability. While this may possibly be attributed to a lack of confidence in the decisions of the lower courts, due partially to the heavy caseloads and limited judicial time spent on each matter, it is also likely due to a certain tolerant judicial culture among appellate tribunals and the time-honored tactics of lawyers for whom the attempt to delay final resolution is part of their legitimate stock in trade.

X. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Courts throughout the world are facing continuing operating crises as they attempt to manage rapidly growing caseloads. One of the proposed solutions everywhere has been the utilization of alternative dispute resolution mechanisms (ADR). Proponents of ADR argue that resolution of cases outside of the traditional court system serves a variety of purposes: decrease of caseloads, improved citizen access to justice, reduction of costs, celerity, enhanced judicial image, and improved user satisfaction as they shift from a confrontational system to one designed to resolve disputes amicably. The primary ADR mechanisms are mediation, conciliation, and arbitration.

1. Currently available ADR mechanisms in commercial matters

Currently, there is an arbitration option for potential civil and commercial litigants under Jordanian law. However, it is used only in limited circumstances because it is so easy and relatively costless for a losing party to take the matter into the courts, either on appeal from the arbitrator's ruling or via a complete *de novo* lawsuit. The benefit is that arbitration is faster than a court case in resolving the issue. However, it is more expensive for the parties, so only companies tend to try to use it. And unless the parties abide by their agreement to respect the result, the matter is likely to wind up in court anyway, often for several years. Most lawyers prefer to advise clients to forget about arbitration and go right to court.

As for international arbitration, although Jordan signed the New York Convention on International Arbitration in 1958, the Parliament has never ratified it. Thus, there is no guarantee that Jordanian courts will enforce international arbitration awards given pursuant to that basic international procedure. This legislative gap may be an impediment to investment in Jordan, and perhaps to some international contracts involving Jordanian parties, although some leading jurists argue that the Convention in effect is operative in Jordan.

2. Observations on the recent explorations of ADR in Jordan

The team was asked to review and consider the present status of efforts over the past four years to introduce ADR and related concepts useful for the reform of the Jordanian civil process. The principal thrust of those efforts has been to familiarize Jordanian lawyers and judges with a variety of methods and procedures that would serve to reduce court backlogs, either by removing matters from the courts or by speeding up the handling of cases within the courts. These efforts involved a significant investment of time and financial commitment by USIS and, to a lesser degree, by USAID, and a major investment of time and effort by groups of U.S. experts,

primarily the Institute for the Study and Development of Legal Systems (ISDLS), a non-profit organization based in San Francisco, California, and many Jordanian lawyers and judges.[51] At present, the main interest has been narrowed to the installation of improved case management methods at the pre–trial stage and the creation of mediation mechanisms at later stages.

The ISDLS group and the numerous Jordanian lawyers and judges who have been involved over the past few years deserve recognition for their considerable work and dedication in bringing the subjects of Case Management techniques and various forms of Alternative Dispute Resolution (ADR) to the considered and progressively informed attention of a large portion of the Jordanian legal community. Through their efforts, a great many Jordanian lawyers and judges have experienced first-hand and through intensive training exercises, both in Jordan and in the U.S., the benefits of the U.S. experience in active case management in the courts and court-annexed mediation. Nor is there any doubt that the installation of the proposed elements now under consideration in legislative proposals – initial case management and mediation - would improve the efficiency of the handling of Jordanian civil and commercial cases.

Nevertheless, to evaluate the practical chances for successful implementation of the proposed new measures, it is necessary to consider the structural and organizational context into which they would be inserted, the degree of preparation and readiness of the court system to absorb them, and the increased resources, human and financial, that would need to be devoted to the program. However, at least as far as can be understood from the available documentation, these aspects have not been specifically considered as yet.

To date, there seems to have been no development of cost projections for either the case management or the mediation elements of the projected reforms, either by ISDLS or by the five-man Jordanian Legal Study Group (JLSG). In addition, the most recent formulation of the case management reform proposal by the JLSG and ISDLS (in July 28, 1999 and November 30, 1999 versions) has decided that: a) the Case Managers to be inserted into the pre-trial process will be of the same rank and level as judges, and b) that the new judge/case managers would be separate from the trial judges. Therefore, substantial additional personnel in the courts appear to be needed to effectively implement. These aspects deserve analysis and reflection and should have a well-designed strategy developed around them if the package is to have a chance of being sold to the Ministry of Justice, the Judicial Council and the Legislative Assembly.

While there is plainly a very Jordanian way of gaining political consensus, and we certainly have no experience in working with it, we believe that more work is needed to prepare the ground for the changes that have been envisioned by ISDLS and JLSG. For purposes of this critique, we assume the substantive appropriateness of the plan. Nonetheless, in our view, and based upon our previous legal systems development experience, an ambitious legal development project seeking legislative authorization and requiring subsequent ministerial implementation should not go forward into the political arena without a strategy that anticipates the resource

[51] Much of the ISDLS work resembles their Palestine effort. See their report in: Hiram E. Chodosh and Stephen A. Mayo, "The Palestinian Legal Study: Consensus and Assessment of the New Palestinian Legal System," 38 ***Harv. Int'l L.J.*** 375 (1997). They reached many of the same conclusions and followed methodologies similar to those described in this article. See also: Hiram E. Chodosh, Stephen A. Mayo, Fathi Naguib, Ali El Sadek, "Egyptian Civil Justice Process Modernization: A Functional And Systemic Approach," 17 ***Mich. J. Int'l L***. 865 (1996).

issues likely to be raised by proponents and opponents alike, incorporates hard data and prepares a considered set of responses.

In the case at hand, we understand that the JLSG has drafted a proposal for limited reforms to the civil procedure code to enable the Court Management Plan, and has forwarded it to the Legislative Bureau in the Prime Ministry, bypassing the Ministry of Justice. The JLSG believes that legislative authorization is needed for the full program, but not for the proposed five-judge pilot program in the Amman First Instance Court as described in the November 1999 ISDLS "Report on the Implementation of Commercial Justice Reforms in the Hashemite Kingdom of Jordan" (pp.10-12).

Basically, the plan is to insert a new pretrial management function into the Civil Procedure Code, consisting of a judge/case manager-supervised attempt to narrow issues, promote mediation and arbitration, and generally work with the parties to prepare the case for trial if ADR fails to produce a settlement. A maximum period of 120 days from the filing of a case would be provided to accomplish the purpose, with discretion for an additional 30 days.

Given the difficult resource conditions currently facing the Jordanian courts, it is clear that several aspects of the situation make it difficult for the present plan to be adopted effectively, even if there were complete and favorable consensus among the bench, the bar and the government.

The principal problems are:

1. New Personnel Requirements

1.1. Judges

The Case Management Plan would require the effective doubling of the number of judge positions in the First Instance Courts. The consultant team heard from all sides that the present number of judges could not remotely handle the current caseload, at least not in the Amman courts. The statistics on caseflow from the Ministry of Justice (MOJ) bear out the representations made in our interviews. It is fair to say that the quality of judicial attention to present cases is seriously deficient and satisfies no one. The leadership of the Ministry of Justice calculates that 200 additional judges – over a 50% increase - are needed now to remedy the situation, but the GOJ budgetary situation has not improved and it is currently impossible to hire the new judges needed.

While it might be possible to institute the Case Management reforms with fewer new judge positions and less budgetary strain by devising a progressive adoption of the new structure in those First Instance Courts with the most crowded dockets, even a partial adoption will require additional resources, and the MOJ priorities for any new funding received are not focused on the Case Management Plan.

1.2. Support Personnel

Each new Judge/Case Manager would need a minimal staff. Indeed, the JLSG draft statute establishing the Case Manager's function and duties traces a virtual mirror image of many of the present duties of a current First Instance judge. The draft statute is quite formal and clearly envisions another layer of judicial function. The new Case Managers would not be able to operate without their own clerks and other auxiliary staff.

2. Continued Excessive Formality

Particularly notable is the JLSG draft statute's continuation of the requirement that the plaintiff or his attorney must sign each sheet of all documents submitted to the court to initiate a lawsuit. In the case of a major commercial case involving hundreds of pages of contractual, technical or other supporting documents, this becomes enormously burdensome.

3. Absence of Computers in the Civil Courts

The court clerks at all levels continue to write the record of each case entirely by hand. Hearing records of witnesses' testimony continue to be developed by the handwritten recording of the dictation of the judge in open court. Files and folders of entirely paper records continue to mount and are stored throughout the new Palace of Justice in open racks and shelves. This archaic record keeping and record management deficiency must begin to be addressed soon if the Jordanian court system is to begin to function in a remotely modern context, and to face the challenges of the opening of the economy.

4. Suggested Addition of a Computerization Component

The new functions that the Case Management Plan envisions ought to be accompanied by the development of a set of computerized templates for the registration and handling of each matter. If the pilot plan is authorized, it should be prepared and implemented with an accompanying computerization of the new procedures, and appropriate software and hardware acquired. In this way, detailed reporting on the results and the statistics over time could be developed, and, presuming the new system demonstrates its utility, used to convince MOJ and GOJ to move to the next stage. While admittedly difficult to accomplish in the present budgetary circumstances of the MOJ, it is an opportunity that should not be lost if the pilot is authorized.

In sum, the Case Management Plan may be worth pursuing, but it must necessarily be developed within the larger context of the political and institutional structures that must absorb it and make it work over the long term. This is a doubly difficult task, as that structure itself has no effective strategic planning or performance based budgeting at present.

XI. Problems Facing the Administration of Justice

The problems facing the administration of justice in Jordan cannot be isolated from the political, economic, social and cultural milieu in which it operates. The system of administration of justice is evaluated in this section. It is analyzed in terms of the regulatory provisions which govern its actions, and whether or not they are in line with the current realities of the country; the

accessibility of the system; judicial independence; fairness; efficiency in its application; and, accountability.

1. Judicial Independence

Judicial independence is a benchmark of a democratic society. Achieving this principle requires the Justice Sector to be both externally autonomous (to formulate and manage its budget, to hire and fire its personnel and to take decisions without any external interference), and internally independent (freedom of the lower judicial instances to act independently of those above, yet respecting the existing reviewing hierarchy).

In its simplest form judicial independence consists in: "(a) the degree to which judges ... decide [cases] consistent with ... their interpretation of the law, (b) in opposition to what others, who are perceived to have political or judicial power, think about or desire in like matters, and (c) particularly when a decision averse to the beliefs or desires of those with political or judicial power may bring some retribution on the judges personally or on the power of the court."[52]

Justice systems of developing countries are often perceived as lacking independence. Several contributing factors have been identified: 1) a tradition of executive branch or head of state supremacy; 2) political instability; 3) the civil law tradition which emphasizes a more bureaucratic role for the judge in application of the laws; 4) the complexity and formalism of the system; 5) lack of a supporting political base for judicial independence or to which the system is accountable; and, 6) the procedures for the selection, promotion and discipline of judges.

King Abdullah, in his speech to Parliament in November 1999, emphasized the salutary effect of maintaining a balance of power between and among the three branches of government. He committed his Government to supporting the "independence of the Judiciary through legislation that supports this independence and safeguards it, providing incentives and means that assist the Judiciary to fulfill their acclaimed mission in bestowing justice among people and the prevalence of law above all. Jordanians are equal by law. Justice is the base of governing and the guarantor of the values of tolerance, affinity, integration and national unity."[53]

Some of the persons interviewed complained that superior or external actors sometimes influence judicial decisions. The U.S. State Department Human Rights Report for 1998 complained of this practice, stating:

> "The Constitution provides for the independence of the judiciary; however, the judiciary is subject to pressure from the executive branch. A committee whose members are appointed by the King determines a judge's appointment to, advancement within, and dismissal from the judiciary. The Ministry of Justice has great influence over a judge's career and often subverts the judicial system in favor of the executive branch. There have been numerous allegations that judges have been "reassigned" temporarily to another court or judicial district in order to remove them from a particular proceeding. In one

[52] Theodore Becker, ***Comparative Judicial Politics: The Political Functioning of Courts***, 1970, p. 144.

[53] His Majesty King Abdullah Bin Al-Hussein, Speech to the 13th Jordanian Parliament, the 3rd Ordinary Session, November 3, 1999, http://www.parliament.gov.jp/english/throne/royal.htm.

> instance, the Minister of Justice allegedly formed a special appeals court panel to try several counts related to an influential member of society who had been charged with the sale of children to foreign adoptive parents in order to avoid a trial before the regular court of appeals."[54]

Lack of judicial independence is a considerable barrier to trade and an impediment to liberalization of an economy. Investors, whether foreign or national, are unwilling to risk investments in a country in which outcomes may be influenced by a judicial system susceptible to external pressures. US investors, for example, are warned by the State Department Commercial Guide for persons wanting to trade or invest that while the constitution guarantees judicial independence, "however, in practice, it is susceptible to political pressure and influence by the Executive."[55]

While lack of judicial independence may hinder economic development, even more importantly, it may become a barrier to consolidation of democracy and the Rule of Law. The public perception of judicial independence is fundamental in determining their support of the system and their utilization of its resources. Lack of opinion surveys to measure popular trust in the autonomy of government institutions, including the judiciary, makes it impossible to determine this variable.

In terms of external independence, the Judicial Branch is not autonomous, since it is dependent upon the other branches of the Government. The Ministry of Justice assumes all administrative oversight over judicial functions, with the exception of personnel decisions affecting judges, and this has been a point of criticism by lawyers. Among the powers that the Ministry may exercise over the Judiciary are: 1) reassignment of judges to any duty deemed necessary, without authorization from the Judicial Council, for a period of three months; 2) extension of the reassignment with the approval of the Council.[56]

Recently a proposal was introduced in the Chamber of Deputies to award total autonomy to the judiciary and to eliminate the Ministry of Justice's administrative oversight function. Judges and other experts questioned, however, were skeptical that this decision would have much impact over judicial autonomy. Indeed, some felt that judges might be more subject to pressures from judicial superiors should the Ministry of Justice be removed from supervision of judicial functions.

Some of the persons questioned complained that there was a lack of political will to modernize the courts as demonstrated by the meager resources assigned them by the Government. Judicial budgets, they complain, have not risen beyond .04% of the national budget in recent years. If allocation of resources is a valid measure of political will for reform, past

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[54] U.S. Department of State, Jordan Country Report on Human Rights Practices for 1998.
[55] US Department of State, FY 2000, Country Commercial Guide: Jordan, 1999.
[56] "It can be said, that the minister's right to delegate in most of the cases, was not necessary. The law provided that the post or work for which the judge is delegated, shall not be of a degree lower than his original job or work. The judge, however, may be delegated to teach in the Judicial Institute and universities, by a decision of the council and upon recommendation of the minister. Moreover, the judges shall not be transferred from the Judicial body to another post or to delegate him to a work other than his own, or to work overtime except with the approval of the council." Senator Adeeb Halassa, ***supra***, 7.

history demonstrates a lack of such commitment in the judicial area. Some of the persons interviewed commented that commitment to judicial reform and consolidation of the Judiciary is rhetorical and is not a priority.

One of the main guarantees for an independent and professional judiciary is the creation of a civil service system for all levels of judicial personnel, which establishes norms and procedures for their selection, promotion, remuneration and removal. Judges who are not guaranteed that their tenure will not be interfered with, whose salary or benefits are uncertain, who can be reassigned at will and who may be evaluated subjectively cannot be independent.

Jordan has established a merit-based system for the selection, promotion and sanction of judges. Judicial tenure, under this system, is indeterminate and judges may be transferred from one post to another. The latter is a source of complaint of some former judicial officials who complain that transfers to outlying courts is a method of intimidation of noncompliant judges and argue for some sort of guarantee of stability in the assignment of judges to specific courts.

Any personnel system must have a mechanism to evaluate the performance of employees. Such a system should be based on fairness towards those evaluated and utilize verifiable measures of performance. The current system is deficient in both points. There are no periodic evaluations of non-judicial personnel and personnel decisions are largely left up to the discretion of the Ministry of Justice or judicial superiors.

2. Norms

In a society governed by law, laws and codes must define the operation of the system of administration of justice. Jordan's normative framework continues to reflect the influence of the foreign powers that dominated the region prior to formal establishment of the kingdom. Ottoman influence can be detected throughout with substantial input from the French who inspired the Jordanian Civil Code and Code of Civil Procedure. The influence of *Shari'a* (Islamic law) is palpable in all laws even though there is a clear-cut demarcation of those areas that are the exclusive province of religious courts.

Much of the substantive legislation regulating commerce is of recent origin with a massive law reform effort underway to conform to World Trade Organization accession requirements. The Code of Civil Procedure appears of recent enactment (1988) but its procedures are inspired by Napoleonic codes that date back to the 19th century. Jordan continues to adhere to the French model even though more substantial recent reforms to European civil law codes of civil procedure can be found in Germany, Austria and Portugal.

In some instances, the procedural safeguards are illusory. For example, the Code of Civil Procedure establishes terms by which decisions must be made; yet they are seldom complied with, given the caseloads and delay that characterize Jordanian courts.

3. Accessibility

Accessibility refers to the possibility of any citizen to reach the judicial system to solve

problems or conflicts, which have been legally predetermined as within the judicial competence.

This principle is conditioned on a series of factors: a) public knowledge of the law, b) costs, c) location and number of courts, d) schedules, e) caseloads and celerity, f) corruption.

3.1. Knowledge of Rights and Institutions

A primary pre-condition for the system to be truly accessible is citizen awareness of the laws and of the institutions of the justice sector. In this regard, the consultants gathered no information about public knowledge of their civil or criminal rights. However, given the complexity and traditional closed functioning of the legal system, knowledge of legal rights is likely deficient.

The scarcity of free legal services for lower income groups contributes to the lack of legal knowledge. Likewise, the ease of access and rapidity of legal processes will affect a user's willingness to resort to the system. As is discussed hereafter, the system is complex, overburdened and slow.

To promote more openness, it is important for the justice system to be particularly concerned about the problems of an uninformed population, confused as to their rights or the institutions that may redress their grievances, lacking adequate legal representation, and facing a complex legal system with unclear laws and procedures. Under these conditions, the justice system becomes an inaccessible resource or option for the population and may lead some to seek alternative means of resolving disputes, including violence.

3.2. Confidence

Another factor, which affects access, is public confidence. Users will seldom accede to a system that they distrust. Trust is partially a product of the perception about system impartiality, the equality with which it treats users and the potential for complex personal difficulties resulting from involvement with the system.

There is very little information about popular perception about the justice system but it is important that the judiciary gauge popular perceptions and evaluations of their system to enable them to respond to these concerns. Currently, the system makes little active effort to determine public opinion or to attempt to shape it. This is possibly due to the fact that, like most court systems, the Jordanian judiciary does not perceive itself to be a public service that must be accountable to users or strive to satisfy them.

3.3. Costs

The user's financial resources and the costs of access also limit access to the system. Even though the Constitution guarantees equality of all citizens, the lack of an effective system for the legal representation of indigents makes this right illusory for the bulk of the population.

Courts are partially financed by the fees that they charge users of the system. There are a

variety of processing costs that must be borne by legal consumers. Of these, some of the most important in impeding access to indigents are: photocopying, certifications, notifications, etc. The fact that some of these fees, i.e. documentary stamps and processing fees, are unrelated to court processes and benefit special interest groups, i.e. the Bar, brings some of these charges into question.

3.4. Location and number of courts

The number and locations of courts and their location determine, in part, popular access to the justice sector and ultimately their confidence in it. There are a total of 369 judges providing services to a population of about 4.8 million or one judge for every 13,000 inhabitants. This figure is extremely high and is plainly a major source of the growth of court delay due to the physical inability of the judges to speedily process the growing caseloads.

Though the bulk of the caseloads and lawyers are in Amman, only a relatively small number of trial judges - 27% of First Instance and Magistrate court judges - are located in the capital. The courts have complained about the scarcity of judges given the population growth. Additionally, there is poor geographical distribution of courts and judges have complained that decisions on where to place courts are more often determined by politics than need.

Centralization of the Amman courts in the new Palace of Justice has been a positive advance, reducing the problems deriving from courts being scattered throughout a metropolitan area. Nevertheless, many of the efficiencies have been more important for lawyers and judges than for litigants. Court planners, however, do not often take into account availability of public transportation, adequacy of roads and climate as factors which may make access to courts difficult, especially for poor users.

3.5. Corruption

The existence of corruption among judicial personnel also affects access to the system and the application of justice that is truly impartial. The King and the Jordanian Government have recognized the existence of corruption in the public sector and are cognizant of the difficulties in preventing or combating it. Recently, an attempt was made to enact illicit enrichment legislation, but members of the legislative branch, who argue that legislators should be exempted from its coverage, thus far have blocked the reform.

Monetary corruption in the judiciary appears to be limited primarily to support personnel. Given the low salaries allotted to judicial personnel and the insufficient resources accorded to them, some degree of corruption is to be expected. An area of judicial administration in which corruption appears to be a *modus vivendi* is in the service of process. Process servers are paid very low salaries and are given no transportation to serve notifications and summonses. It is, therefore, not uncommon for lawyers to be asked to "tip" the process server to serve papers or to delay their service. Lawyers often are compelled to transport them to the place of service to ensure that service is completed legally. The result of this practice is delay, increase in processing costs and loss of confidence in the system. Court leaders and inspectors have apparently done little to curb this practice and lawyers abstain from filing complaints for fear

that retaliation by colleagues of the offending process servers would mean their matters would never get served. The only solution, thus far proposed has been the privatization of the service of process system, although it is unclear how this will overcome the corruption issue.

In addition to bribes, favoritism on the basis of political or judicial influence is another form of interference, which affects the equity of proceedings. This, however, is much more subtle and more difficult to overcome. Many of the persons interviewed pointed to the amount of outside interference in judicial decisions. Some complained that while selection of applicants to the Judicial Institute should be solely merit-based, connections or other factors account for a large percentage of selections. Pressure on judges for favorable rulings is another point of criticism. These pressures may be explicit or implicit and may, apparently, come from within or without the judicial system.

A serious problem for the judiciary is the absence of adequate controls for the prevention and sanctioning of judicial misbehavior. There are only 4 inspectors to review complaints against the judiciary, and no information is readily available to the public about the method or focal point for such complaints. The fact that little has been done to rectify the behavior of process servers seems to indicate an absence of the requisite will to combat unethical behavior.

4. Fairness

The extent of respect for this principle can be evaluated by considering, among others: equality of access to the system, impartiality of the judges, equity of judicial decisions, and respect for fundamental procedural guarantees.

With regard to equality of access to the system, as discussed earlier, there are many barriers to system entry, especially for those persons of lowest income.

5. Efficiency

It is very difficult to evaluate the efficiency of the justice system in terms of costs and benefits. This is because the system is very complex, with goals and objectives of public interest, and deals with concepts that are difficult to evaluate quantitatively, such as justice, equity, innocence, etc. In addition, there is minimal use of modern management or public administration methods in the courts. In spite of this situation, certain parameters give some idea of system efficiency.

One measure is the degree to which the system complies with the time limits imposed by the law, in order that justice be swift. As indicated herein, delay is the order of the day in the system with trials normally exceeding legally prescribed time limits at almost every phase. Among the causes for this slowness are: growing caseloads, insufficient number of judges, the numerous exceptions provided for in procedural laws, as well as the inadequate number of support personnel, the practice of granting continuances routinely, and lack of adequate equipment and supplies needed for the work of the judges. Although there are limited statistics on the workloads of the judges, the fact is that there is a considerable backlog of cases, especially in the bigger cities.

Other indicators of the efficiency of the system are the methods for selection of judicial personnel and their professional preparation. The criticisms of the system of selecting personnel have already been mentioned. While there is an extensive training period for judges, there is no training offered for support personnel, either upon entry into the position or thereafter. Critics of the present system providing for two years of training of judicial applicants assert it is overly theoretical, too lengthy and unrelated to the practical functions that judges will undertake.

Finally, the efficiency of the system can be judged by the degree of satisfaction those who work with and in the system feel with regard to the performance of each participant. Unfortunately, we know little, other than anecdotal data, about the opinions of users and judicial actors about the system. All lawyers interviewed, however, openly complained about the slowness of the process and its inefficiency.

The system cannot function properly if it does not even have available to it the equipment and services it needs. There are deficiencies in physical facilities, office equipment, libraries, and bibliographic materials.

In general terms, the inefficiency of the system of justice is caused, to a great extent, by the absence of planning and evaluation policies and mechanisms.

5.1. Administration

Justice administration is a new concept for this sector. Although the Judiciary has undertaken some reform efforts, there are still significant administrative problems related to the judicial organization and structure: a) many departments have been established without a clear definition of their functions and have poor material resources; b) unclear lines of authority; c) chains of command are not complied with; d) excessive centralization of authority; e) absence of inventories and a lack of planning for future needs.

5.2. Budgeting, Planning and Evaluation

Preparation of judicial budgets is not based on a rational planning process that evaluates needs and projects requirements. For example, the revenue generated by the judiciary is not taken into account in the elaboration of the budget even though it exceeds the budget allocation. Finally, centralization of the budgetary and financial management in Amman isolates other courts from the process.

The Jordanian judicial system has virtually no planning and evaluation functions. There has never been an adequate assignment of resources to carry out sector planning or a definition of achievable goals and objectives. There is a common tendency in the Jordanian justice sector to confuse sector planning with the process for budget approval.

Critical to the development of a planning and evaluation system is the existence of reliable information and statistical systems. In Jordan, as in many other developed and underdeveloped countries, there is confusion as to the meaning of information systems. The term

is often used solely in reference to automation without recognition that information flows through a variety of means, and must be utilized systematically in management decisions. Even though justice statistics are an integral part of any information system, they have been treated separately due to their importance in the development of efficient planning and evaluation systems. The Government of Jordan is in the process of introducing financial management reforms, specifically program and performance budgeting as a response to the development challenges of Jordan. Given the current resources and lack of planning, it is difficult to imagine that the judiciary will be able to establish measurable indicators and to evaluate progress towards achievements of these goals.

The manner in which such justice statistics are presently collected and reported in Jordan severely limits their utility for planning and evaluation. Additionally, their reliability is open to question.

5.4. Caseloads and delay

One of the most serious problems hindering the efficiency of the administration of justice is the increasing number of cases entering the system without a corresponding increment in human and financial resources. The combination of growing caseloads and diminishing resources result in delays in case processing.

All persons interviewed agree that the primary problem facing the judicial system is caseloads that are rapidly growing and must be managed by a reduced number of trial judges. For example, filings in First Instance Courts were 327,000 in 1999 for a rate of 3,035 cases per judge. In order to keep up with the caseloads, these courts resolved 356,000 cases or 3,044 for each First Instance judge.

There have been no solutions proposed by the Ministry or the Judiciary to alleviate caseloads other than the establishment of new courts, a demand that has so far been unmet by the Finance Ministry central budget administration or the Royal Cabinet. Studies carried out in other countries have shown that simply increasing the number of judges or shifting their jurisdictions cannot solve the problem. It would take, for example, several times the number of current judges, working for a number of years to clear the current dockets, assuming no growth in the number of current cases filed annually.

An alternative solution to the problem of judicial congestion is to encourage alternatives to the courts. The adoption of alternative dispute resolution mechanisms could free the courts to deal with the most serious cases while encouraging amicable settlements among all disputing parties. As seen, there has been a considerable effort to promote this aspect in Jordan over the last few years, with the support of the U.S. Embassy and a Jordan Legal Studies Group (JSLG), which has yet to be accepted by the GOJ or the courts.

Another mechanism designed to reduce delays and to improve the efficient local administration of courts is active case management. Case flow management describes the continuum of resources and processes necessary to move a court case from filing to disposition. Case flow management suggests active attention by the judge to whom the case is assigned to

more than the legal and procedural elements alone. It also suggests an oversight role for the higher courts.

However, despite the considerable and important recent efforts by the U.S. Embassy-supported groups and the clarity of their proposals on this aspect, the consultant team found little commitment on the part of judges to control the movement of cases and avoid backlogs, and no clarity on how to approach the issues. Individual courts do prepare statistical reports monthly. However, these reports do not provide information useful for controlling caseloads, since they are aimed at generating the data necessary for the annual report rather than informing supervising judges and higher courts of backlogs.

A result of judicial inefficiency and growing caseloads is processing delays. The reliability of judicial statistics is unproven but it appears that little effort is made to use these statistics for management or planning purposes or to evaluate the work of individual courts. There does not appear to be a clear-cut definition of the purpose of such data or their usefulness.

As mentioned above, legally established processing periods are seldom met. There is no evidence of established guidelines for the processing of cases through case management standards.

6. Personnel System

The most important element of any institution is the quality of its personnel. This is especially so in the justice system wherein the effectiveness of the personnel determines the fairness of the system and the respect which the public will have towards it.

The problem of inadequately qualified personnel has been partially overcome in Jordan by incorporation of support personnel into the national civil service system while judges have their own system. The system is so protective of employee rights, however, that it is almost impossible to remove or discipline support personnel or to reward meritorious conduct.

Inadequate salaries make it difficult to attract qualified personnel to all levels of the justice system, but the problem is particularly acute at the lower levels. In addition, the low salaries and decreasing prestige threaten the independence of the judiciary, creating conditions in which the system becomes increasingly susceptible to corruption and influence.

The adoption of undefined terms of office for judges may further constrain the effective administration of justice. The possibility that judges may be transferred to other courts or even removed without effective guarantees of tenure and permanence may produce judges who find themselves either having to curry favor to maintain their position, or succumbing to opportunities for personal enrichment in the expectation that their tenure may be both short and underpaid. Finally, control mechanisms to assure efficiency and ethical behavior are inadequate.

7. Accountability

Public accountability ("transparency") is a current primary theme in public administration worldwide. It rests on the premise that public officials have a duty to report to those who placed them in positions of power, that the work of government officials can and should be periodically evaluated and that it should be done in a public manner.

Increased openness of the Jordanian political system, particularly the legislative branch, has prompted politicians to communicate more regularly with the electorate and convince them of the benefits to be derived from keeping them in office.

The judiciary, on the other hand, generally feels reluctant to render accounts of their work, with many feeling that they should only be responsible to a vague notion of the "Law." In addition they take refuge in principles of judicial independence and characterize their branch as apolitical.

Openness, not secrecy, is at the center of the notion of public accountability. Unfortunately, the latter is the central feature of the justice system. Indeed, personnel who provide ready access may be viewed as dangerous to the institution and may be subject to informal sanctions. There are a variety of mechanisms by which the justice system can submit itself to public review. Publication of periodic reports outlining the successes, failures and needs of the sector is one of the primary tools by which the other branches of government and the citizenry can be informed. However, periodic activity reports by any of the component agencies of the justice sector are rare. In most instances there is no such publication. The little we know about their operation is gleaned from reviews conducted by outside agencies that focus on the most controversial aspects of their work. Judicial publications are dense and uninformative. Statistics are notably absent from most such publications.

One of the primary areas in which there should be some public oversight is in the regulation of the conduct of justice officials. Rather than encouraging complaints and facilitating access to grievance mechanisms, the justice system tends to impede access by not informing the public about the place and manner in which complaints can be filed, simplifying the process, guaranteeing the safety of the complainant, and achieving satisfactory and speedy resolution of cases. The public may feel that wrongs cannot be remedied and that it is useless to complain.

LIST OF PERSONS INTERVIEWED

1. Judge Mahmoud Abanech, Court of First Instance, Amman
2. Nadia A. Al Alami, Cultural Programs Specialist, United States Information Services, US Embassy Jordan
3. Dr. Fayyad Alqudah, Professor of Commercial and Banking Law, Faculty of Law, University of Jordan
4. Ahmad El Amad, Director of Accounting and Finance at the Ministry of Justice
5. Gerald R. Anderson, Senior Private Sector Advisor, Economic Opportunities Office, USAID/ Jordan
6. Dr. Nazim Araf, Secretary General of the Ministry of Justice
7. Randa Arafat, Personnel Department, Ministry of Justice
8. Dr. Moustafa Al-Assaf, Director General, Judicial Institute of Jordan
9. Dr. Salah-Eddin M. Al-Bashir, International Business Legal Associates, Amman, Jordan
10. Ambassador William Burns, U.S. Embassy, Amman
11. Judge Fu'ad Danadkeh, Court of First Instance, Amman
12. Ibrahim Al Douery, Assistant General Manager, Budget Department, Ministry of Finance
13. Dr. Mohammed Duwairee, Court of First Instance, Amman
14. Dr. Mohammed Al Gazowie, Former Dean of the Faculty of Law, University of Jordan
15. Senator Adeeb Halassa, Senate, Jordanian Parliament, former Minister of Justice and Minister of Labor
16. Yassera Asem Ghosheh, International Business Legal Associates, Amman, Jordan
17. Andrew B. Grimminger, Project Administrator and Grants Manager, AMIR Project, Jordan
18. Mansour Hadedie, Director of Planning and Courts Inspector, Ministry of Justice

19. Eng. Shaker Halasa, Directorate of Industrial Property Protection, Ministry of Trade and Industry

20. Mr. Hamdan, Chief of the Information Technology Department, Ministry of Justice

21. Rabei Hamzeh, Private Attorney

22. Raghida Helou, International Business Legal Associates

23. Mazam Irshaidat, General Secretary for the Jordanian Bar Association

24. Nour El-Dean Jaradat, Chief First Instance Court of Amman

25. Zahner Jardaneh, Private Attorney

26. Lewis W. Lucke, Mission Director, USAID/ Jordan

27. Judge Eyad Malthies, Appeals Court, Amman

28. Dr. Gaith Monsmar, former First Instance Judge, Legal Consultant for the Arab Bank

29. Dr. Maher Mouasher, Vice-President, Public Policy Advocacy, Jordanian American Business Association

30. Dr. Elias Nasser, Elias Nasser & Associates

31. Dr. Hala Elias Nasser, Elias Nasser & Associates

32. Dr. Fayadh Qdah, Attorney and Profesor of Law

33. Ali Quabah, Director, National Library (Copyright Office)

34. Samer El Salem, Private Attorney

35. Fawaz Shalan, President, Jordanian American Business Association

36. Dr. Bassam .S. Talhouni, Assistant Professor of Law, Faculty of Law, University of Jordan

37. Judge Mohammed Tarawneh, Court of First Instance, Amman

38. Samer Al-Tarawneh, WTO Unit, Ministry of Industry and Trade

39. Joseph Taylor, Cultural Attache, US Embassy, Jordan

40. Dr. Ahmad Ziadat, Associate Professor, Faculty of Law, University of Jordan

ATTACHMENT A

(Translation from Arabic)

The Hashemite Kingdom of Jordan
Ministry of Justice
Amman

Ref. No.: -
Date : -

P.O. Box: (6040) – Tel.: 4653533 – 4618978 – Fax: 4643197 – Amman - Jordan

Subject: PERCEPTIONS TO PROMOTE PERFORMANCE OF JUDICIARY SYSTEMS (CADRES)

The Ministry of Justice has been attempting to update and modernize the judiciary and legal system to keep abreast of the times of development. This can be achieved through updating and amending of the existing laws in a way that makes them compliant to and in line with the current development process being witnessed by the Kingdom and the world in all fields of knowledge. Modernization and updating include opening of communication channels with brethren and friendly countries through bilateral and multi-lateral (international) agreements in the field of law and judiciary as well as exchanging of experiences and visits.

In order to achieve further advancement and enhance efficient performance of the judiciary systems (cadres), the following points should be realized:

1) Setting up, upgrading and maintaining of a computer center that feeds (provides information) a computerized judiciary and legal database. This entails supporting the judiciary cadres with trained technical staff and/or training the existing cadres. Hence, setting up of a computer center with all-necessary equipment, and arranging for the required appropriations should be expedited.

2) Recording of trial proceedings by clerks sitting in front of judges is still being performed manually. This means that clerks hand-write pleadings and proceedings conducted at courts. As technology advancement has provided more advanced and user-friendly alternative ways and means, necessity calls for handwriting of court proceedings and pleadings be replaced by other methods such as shorthand and laser printing. This requires provision of necessary equipment and trained cadres.

3) Constructing of new courthouses and/or refurbishing existing court premises, and modernizing their furniture. Appropriate sites have to be chosen for the new court buildings taking into consideration that these buildings be equipped with computer setups and audio-visual aids.

ATTACHMENT A

4) Providing of computer hardware and software to all courthouses and setting up of one library at each courthouse.

5) Drawing up of new computerized administrative procedures for all administration divisions at courthouses, as well as providing computer equipment and training of employees on using and maintaining this equipment.

6) Providing scholarships to judges and administrative staff to attend foreign language courses for a period of no less than six months, particularly courses in English and French languages.

7) Activation of specialties (specialized fields) in court operations and activities. This requires that judges be seconded to attend training courses with a view to learn latest methods and approaches observed and applied by advanced countries in this field.

8) Increasing the number of workshops and conferences to be convened in all branches of law, especially the conferences that handle the role of judiciary in trade and investment, with the aim of gaining experience in the field of merging local economy with the global one.

With regards, I remain

Yours respectfully,

INSPECTOR
MANSOUR AL-HADEEDI

(Signed)

ATTACHMENT A

ATTACHMENT A

ATTACHMENT B
(Translation from Arabic)

Royal Scientific Society
Computer Technology, Training & Industrial Studies Centre

Summary, Recommendations and Proposals

The purpose of this study is to understand the structure of the manual systems applied at the Palace of Justice, evaluate the efficiency and comprehensiveness of the existing software applications and systems, and define the requirements for computerizing the activities and operations of the Palace of Justice as to application software, computer hardware and peripherals.

1. DESIRED BENEFITS

The efforts of the Top Management of the Palace of Justice to keep pace with technological advancement through computerization of its systems, and avail of the information services, which such advancement provides, represent a practical way of putting information technology within the reach of judges, advocates, administrators, employees and the public. Appropriate bases to ensure information confidentiality shall, however, be taken into consideration and established. Availability of information services and setting up of an information network inter-linking the various divisions of the Place of Justice will enable these divisions to interconnect with each other via computer. It will provide assistance in the advancement of operations and provision of instantaneous services to make information available. It will also result in upgrading practical, planning and operational efficiency, while contributing to integrated coordination among the various divisions of the Palace of Justice. Furthermore, such set-up and information services will facilitate finding solutions to technical obstacles, and enhance fast and wise decision making based on instant, correct and accurate information, which gives actual and clear picture of related matters. Eventually, such performance will expedite daily achievements, higher accuracy of implementation and productivity, as well as positive outcomes. Moreover, it will provide assistance in the retrieval of original transactions (case files …etc.), as the Palace of Justice cadres currently find difficulty in finding them due to their big size and the slow, time-consuming manual retrieval process. It is expected that integrated software applications and systems will enhance performance of routine tasks that are manually implemented by the cadres of the Palace of Justice, as these tasks do require a lot of valuable time and effort. These tasks include transfer, follow-up, and entry of detailed and, quite often, repeated information. Over and above, information on legal actions and cases will be made available easily and quickly.

2. NEEDS OF THE PALACE OF JUSTICE

It has been found that the Palace of Justice requires that the below proposed computerization plan be implemented. The plan comprises the following:

ATTACHMENT B

One) Setting up of computer and application software systems that can satisfy the requirements of computerizing the activities and operations of the Palace of Justice. The systems shall have a comprehensive and integrated design that can realize information inter-linking, and ensure continuity, compatibility and use of information. This computerization process shall also include the courts of the Palace of Justice in the governorates of the Kingdom.

Two) Purchasing of the requirements of the integrated information & application systems: computer servers and peripherals (hardware), their basic software (operating systems and supporting software), relational data base management system (RDBMS), documentation management systems "doc-ware" (archives), site setups, and computer network.

3. COST ESTIMATES AND IMPLEMENTATION PHASES

The total estimated cost of all phases of proposed computerization plan amounts to JD 1,235,200 distributed as follows:

- Setting up of an integrated computer network at the Palace of Justice. **(Total cost estimate is JD 102,500)**.

- Provision of one computer server to be used in the upgrading of the required application systems. **(Cost estimate is JD 67,200)**.

- Provision of one main computer server (mainframe) for archiving of the documentation management system of legal actions (cases, lawsuits … etc) at courts. **(Cost estimate is JD 103,800)**.

- Provision of three computer servers for archiving of the documentation management systems of the Palace's Administration Departments (Dawaween), Notary Public Department, and Procedures Department. **(Cost estimate is JD 224,700)**.

- Provision of two clustered departmental servers of high capacity, and high operational and storage capabilities. When all systems required for the activities of the Palace of Justice are set up, and as soon as the two clustered departmental servers of the database of the Palace of Justice replace the system used for setting up the application systems, the latter system will be used as a server for the Procedures Department. **(Cost estimates JD 647,000).**

- **Application Systems Setup Process:** The Palace of Justice needs to setup twenty-five application systems. **(Cost estimates JD 90,000).**

ATTACHMENT B

4. PERIOD REQUIRED

The time span required to implement all phases of proposed equipment – if implemented simultaneously (as one batch) - is six months. However, in case of multi-phase implementation (as per proposed phases), each phase will take six months.

The time span required for setting up complete application systems is estimated at 20 – 24 months.

ATTACHMENT B

ATTACHMENT B

ATTACHMENT B

ATTACHMENT C

Reasons for the Draft Law on the Autonomy of the Judiciary Law No. ( ) of 1999

The Judiciary is one of the three powers of government: the Judicial, the executive and the legislative. The Constitution grants the Judiciary full autonomy. However the current Law on the Autonomy of the Judiciary undermines the Judiciary's Autonomy in so far as it grants the Minister of Justice (as part of the executive branch) certain authority over the Judiciary, in particular, the authority to make recommendations for appointments, retirement to pension, or delegation.

The proposed Draft Law ensures for the Judiciary full Autonomy from the executive branch and makes the Judicial Council the sole authority responsible for the Judiciary.

ATTACHMENT C

Draft
Law No. ( ) for the Year 1999
The Law on the Autonomy of the Judiciary

Article (1): This Law shall be known as "The Law on Autonomy of the Judiciary for the year (1999) ", and shall come into force as of the date of its publication in the Official Gazette.

Article (2): The following words wherever mentioned in this Law shall have the meanings designated hereunder unless otherwise indicated by context.

The Council	:	The Judicial Council.
The Chairman	:	The Council's Chairman/ the Chairman of the Judicial Authority.
The Judge	:	Judges of Ordinary Courts and of the High Court of Justice, and representatives of the Public Prosecution at such courts, and the Inspectors of Ordinary Courts and any judge appointed by the Council.

Article (3): Judges shall have full autonomy, and shall not, in judicial matters, be subject to other than the authority of the Law.

Part I
The Judicial Council

Article (4): The Judicial Council shall consist of the Chief Justice of Court of Cassation as Chairman and the following as members:

One-	The Chief Justice of the High Court of Justice	Vice Chairman
Two-	The Chief Public Prosecutor at the Court of Cassation.	
Three-	The two most senior Judges at the Court of Cassation.	
Four-	The Chief Justice of Amman Court of Appeal.	
Five-	The Chief Justice of Irbid Court of Appeal.	
Six-	The Chief Justice of Ma'an Court of Appeal.	
Seven-	The most senior Inspector of the Ordinary Courts.	
Eight-	The Chief Justice of the Amman Court of First Instance.	

ATTACHMENT C

Article (5): a- In the Chairman's absence, Council's meetings shall be headed by the Chief Justice of the Court of Appeal. If both the Chairman and the Chief Justice of the Court of Appeal are absent, the Council's meeting shall be headed by the most senior Council member in attendance.

b- In the absence of the Chief Public Prosecutor, The Amman Public Prosecutor shall attend in lieu thereof.

c- In the absence of any member of the Court of Cassation, the member second in seniority shall attend in lieu thereof.

d- In the Inspector's absence, the inspector second in seniority shall attend in lieu thereof.

e- In the absence of Chief Justice of any Court of Appeal, the member of that court second in seniority shall attend in lieu thereof.

Article (6): a- The Council's meetings shall be called by the Chairman's and shall be held at the Court of Cassation or any other place deemed appropriate by the Chairman.

b- The Council's quorum shall consist of at least seven of its members. The Council's resolutions shall be adopted by absolute majority vote of its members. In case of a tie, the most senior judge of the Court of Cassation shall join the Council to provide the majority necessary for adopting a decision.

c- The Council may request from any official department or any other entity any data and documents it deems necessary.

Article (7): Council deliberations shall be confidential; the disclosure of such shall be considered as disclosure of confidential court deliberations.

Article (8): The Chairman shall prepare at the beginning of each year an annual report on the state of the court and court affairs for the preceding year. The Chairman shall submit the report to the Council for approval, and thereafter to H.M the King with a copy thereof to the Prime Minister.

Article (9): The Council shall set forth the legislative proposals it deems in the judiciary's interest. Moreover, the Council's approval is required for all draft laws and regulations related to the judiciary and the Public Prosecution, including legislation related to Court Procedure.

ATTACHMENT C

Part II

Appointment of Judges

Article (10): Any appointed judge must:

One- Be a Jordanian national with civil capacity.

Two- Be at least twenty seven years of age and physically fit for appointment.

Three- Not be convicted of a felony other than political crimes.

Four- Not be convicted by a court or a disciplinary council for dishonoring conduct even if subsequently rehabilitated or included in general pardon.

Five- Be of good manners and repute.

Six- Hold at least a first law degree from a faculty of Law in a Jordanian University or any degree considered equivalent thereto by the Council upon consultation with the competent authority in the Kingdom for granting equivalence to foreign degrees, provided the degree is accepted for purposes of judicial appointment at the country from which it was issued.

Seven- An appointed Judge also must:

1- Have a minimum of six years working experience as a lawyer if s/he holds only a first degree of law, or four years if s/he holds a graduate degree (Master's) or three years if he/she holds a doctorate or:

2- Have taught at law faculties in Jordanian Universities for at least five years after having acquired the doctoral degree in Law or;

3- Hold a Diploma from the Judicial Council as delegated by the Council for this purpose.

Article (11): No person shall be appointed as judge unless the person's competence, manners and appropriateness for the post is established. An exam shall be held for applicants to fill vacancies of the fifth and sixth rank, which shall be prepared by a committee appointed by the Council and comprised of senior judges of at least the first rank. Vacancies and exam dates shall be announced by the Chairman.

Article (12): a- Upon initial appointment, any Judge, regardless of rank thereof, shall be subject to a three year probation period, during which the Council shall have the right to terminate the judge's appointment, if it deems the judge incompetent or unfit for the post on account of character or on moral grounds . This provision shall apply retroactively to any judge appointed before this Law come into effect.

ATTACHMENT C

b- A Judges appointment shall be deemed terminated at the end of the probation period, unless Council issues a decision confirming the appointment.

Article (13): The Chief Justice of the Court of Cassation appointment, the termination thereof, and the acceptance of resignation of the same shall be by Royal Decree.

Article (14): a- Appointment to judicial positions shall be by Council's decision upon the Chairman's recommendation, provided more than one candidate is recommended for a vacancy, wherever possible. The Council's decision shall confirmed by Royal decree.

b- Notwithstanding the provisions of any other legislation, the Council shall have the right to appoint any person recommended for a judicial position to the rank it deems appropriate in view of the person's academic credentials and practical experience . However, the person shall not be appointed to a rank higher than the highest rank assumed by the appointee's working peers who are graduates of the same year and have the same academic credentials.

c- Two thirds of the actual practice of a lawyer, upon appointment thereof as a judge, shall count towards retirement, provided the judge serves in the Judiciary for at least ten successive years from the date of appointment , unless prevented by debilitating illness or death, and provided the judge's pension contributions are assessed on basis of the first salary received in the Judicial Post.

Article (15): a- Upon the Chairman's recommendation, the Council may undertake any of the following:

1- Appoint judges by contracts according to the terms the Council deems appropriate provided the period of appointment is not less than two years or not more than four years. Such contracts may be renewed one or more times provided the total period of the contracts does not exceed four years. The total remuneration allotted for any judge appointed by contract pursuant to the provisions of this Paragraph shall not exceed twice the amount of the total remuneration allotted for a judge appointed pursuant to the Judicial Service Regulation in force.

2- Appoint judges by contracts to handle specific cases subject to the terms of the contract, including the terms of remuneration.

b- The service of a judge appointed pursuant to Paragraph (a) of this Article shall not be counted towards the judge's retirement.

Article (16): a- Upon appointment, and before assuming post, a judge shall take the following oath: (I swear by the Allah the Almighty to be loyal to the King and to my

ATTACHMENT C

country, to rule justly between people, to abide by the Law, and perform my responsibilities faithfully and to maintain the conduct of an honest and honorable judge).

b- The Chief Justice of the Court of Cassation and the Chief Justice of the High Court of Justice shall take the oath stated in Paragraph (a) of this Article before H.M. the King.

c- Judges of the highest rank shall take the oath referred to in Paragraph (a) of this Article before the Council. Other judges shall take the oath before the Chief Justice of the Court of Cassation.

Article (17): a- Notwithstanding the provisions of any other legislation, the Council, upon the Chairman's recommendation, may retire to pension the Chief Justice of the High Court of Justice or any other judge who has completed the retirement period of service stipulated in the Civil Pension Law.

b- The Council, on the basis of a decision adopted by majority vote if at least seven of its members, may retire provisionally or terminate the services of any judge who has not completed the retirement period of service.

c- The Council Member whose retirement, provisional retirement or the termination of whose services is to be considered in a Council's meeting shall not attend the said meeting.

Part III
Duties of Judges

Article (18): a- A judge shall not, engage in commercial activity, be a member of the board of directors of any company, corporation or authority, or hold any position or profession other than his/her judicial post.

b- Upon the Council of Minister's approval, and pursuant to the Council's recommendation, a judge may be appointed arbitrator in disputes, which the Government or any Public Sector entity is party thereto, or in disputes of international character.

Article (19): A judge shall reside in the area of his/her work unless authorized in writing by the Chairman to reside in another area in close proximity thereto. A judge shall have to take leave for absence the superior thereof, and shall not abstain from work

without the Chairman's written consent, except for justified and unforeseen causes.

Part IV
Promotion

Article (20): a- Promotion of a judge in rank shall be by a Council's decision confirmed by Royal Decree. Promotions shall be based on merit and competence as recognized by the Council, on the basis of Inspector's reports and the Judges' performance, with due account taken of any disciplinary measures imposed on a judge. In case of a tie, promotion shall be for the more senior judge.

b- Seniority of Judge shall be determined as follows :

1- If paid a higher salary than other Judges in the same rank.

2- If salaries of all judges in the same are the same, then seniority shall be attributed to the judge who is the first to have received such a salary.

3- If application of (b) leads to a tie, then seniority shall be attributed to the Judge who was first to attain the rank

4- If application of (c) leads to a tie, then seniority shall be assessed with reference to the lower rank and so forth to the earlier one, if there is a tie. Otherwise, if this also leads to a tie, seniority shall be attributed to the judge who is the longest in service, or if this also leads to a tie, to the judge who is the most senior in age.

Article (21): a- With the exception of promotions beyond the special rank, promotion of a judge shall to a higher rank shall not be before the lapse of three years from the date of assuming such a rank, unless the judge is appointed to the highest tier of that rank, in which case promotion may be after one year. If candidates are equally qualifies, priority in promotion shall be given to the judges who have taken the courses of the Judicial Institute set by the Chairman.

b- Upon completion of the period stipulated in Paragraph (a) of this Article, a Judge considered for promotion from the second to the first rank or from the first rank to the special rank shall submit an original research to a committee composed of the Chairman and two members nominated by the Council. The committee shall evaluate the research and decide whether it is acceptable for the purposes of promotion.

c- A judge may not be promoted from the special rank to the highest rank before the lapse of three years from the date of appointment to the special rank. However, the Council, may waive this requirement and adopt a decision to promote a judge from the special to the highest rank in a shorter period,

ATTACHMENT C

provided the decision is justified on grounds of extreme necessity or exceptional circumstances.

Article (22): a- Annual raises shall be by the Chairman's decision.

b- The Council may deny a judge the annual raise for a period not exceeding one year if the judge has been subject to any of the penalties provided for in Paragraph (a), (b), (c) of Article (38) of this Law. The Council shall deny a judge the annual raise if the judge has been subject to the penalties referred to in Paragraph (a), (b) of the said Article more than once within three years, or subject to any of the said penalty jointly with another penalty.

Part V

Transfer, Delegation, Secondment and Resignation of Judges

Article (23): a- Transfer of judges to a different post within the Judicial System shall be by the Council's decision.

b- A judge may not be transferred to the Court of Cassation before serving at the Court of Appeal or the Court of Grand Felonies for a period of at least two years. A judge may not be transferred to the Court of Appeal before working at the Court of First Instance or the Court of Grand Felonies for at least three years.

Three- Notwithstanding the provisions of any other legislation, a judge may be transferred from the Judiciary to any government entity by the Council's decision and upon approval of the competent Minister. In such a case, the rank and salary of the transferred judge shall be determined according to the Civil Service Regulation.

Article (24): a- In cases of necessity, the Chairman may delegate a judge to any ordinary or special court, or to assume a Public Prosecution post, or inspection duties for a period of not more than three consecutive months per year.

Two- Upon the Chairman's recommendation, the Council may extend the delegation for the period deemed necessary.

Three- Delegation of a judge may not be to a post or an assignment that is lower in rank.

ATTACHMENT C

Four- A judge may be delegated to other than his/her job or to an additional job, or to teach at Universities and specialized institutions, by the Council's decision upon the Chairman's recommendation.

Article (25): a- A judge of the Highest Rank may be seconded to the post of Secretary General of the Ministry of Justice, by the Council's decision and upon request of the Minister of Justice..

b- Subject to the provision of legislation in force, a judge may be seconded to a foreign government or an international body by the Prime Minister's decision, upon the Council's recommendation.

Article (26): The resignation of any judge shall be submitted to the Chairman who shall in turn refer it to Council. The Council may summon the judge, within three days, to hear statements thereof and shall issue its decision thereafter regarding the resignation. The Council may also decide to consider the judge on mandatory leave, fully paid with bonuses, until it reaches its decision regarding the resignation, provided the decision is reached within one month.

Part VI

Trial and Disciplinary Measures

Article (27): A judge may be discharged, or demoted and services thereof may be dispensed with only by the Council's decision and a Royal Decree.

Article (28): a- The Chairman shall have supervisory administrative authority over all judges. The Chief Justice of any Court shall have supervisory administrative authority over judges of that Court. For the purpose of this Paragraph, judges of the Magisterial courts within any district shall be deemed as judges of the Court of First Instance of that district.

b- The Minister of Justice shall have the right to supervise the performance of the Civil General Attorney and assistants thereof in accordance with the legislation in force.

Article (29): The Chairman, upon own initiative or upon the request of the chief judge of a court, may serve written admonition to a judge with respect to any conduct thereof in violation

of judicial duty. The Chairman may decide to keep the admonition in the judge's confidential file and shall have access to any case or procedure at any stage.

Article (30): A judge may not be criminally prosecuted without the Council's authorization, unless caught in flagrant crime. In such a case, the Public Prosecutor shall submit the matter to the Council within twenty-four hours for purposes of arresting or detaining the judge. The Council shall decide on basis of a hearing whether to release the judge, on or without bail, or to keep the judge in detention for the period decided by the Council. The said period shall be subject to extension.

Article (31): The Council, upon its own initiative or upon request of the Chairman, the Minister or the Public Prosecutor, may suspend a judge charged with a crime, or consider such a judge on mandatory leave for the period of investigations or trial. The Council may also issue a decision to withhold up to half of the judge's salary and bonuses. It may also reconsider at any time any of its decisions regarding suspension, mandatory leave and withholding the salary. If not convicted, a judge shall be entitled to the amount of salary and bonuses withheld.

Article (32): A disciplinary case shall be instituted by the Public Prosecutor upon the Chairman's request who shall inform the Council thereabout. If the Public Prosecutor fails to institute the case within fifteen days of the Chairman's request, the case may be instituted by the Council, provided on basis of a justified decision. Submission of a request to the Public Prosecutor to institute the case shall not bar the prosecutor from presiding over the Disciplinary Council and participating in adjudicating the case.

Article (33): a- A disciplinary case shall be instituted by filing a statement that specifies the charge or charges brought against the judge and set forth evidence in support thereof. The statement shall be submitted to the Council which shall issue on the basis thereof its decision to summon the judge. The Council shall initiate the proceedings within fifteen days from the date of receiving the statement.

b- The Council shall carry out the investigations it deems necessary and may delegate any of its Members to do so. The Council or delegated Member thereof shall have the authority of Courts with respect to summoning witnesses for testimony or requesting submission of any other evidence.

c- If the Council decides to proceed with the case with respect to all or some of the charges, it shall summon the judge for trial provided the trial date is at least seven days after the date of the summons. The summons shall set forth an

ATTACHMENT C

adequate statement on the subject matter of the case and the evidence in support of the charges.

Article (34): A disciplinary case shall terminate upon the judge's resignation and the Council's acceptance thereof or upon the Judges retirement. A disciplinary case shall not be a bar to instituting a criminal or civil action on the same case. Council may still refer the case to Public Prosecution even if the judge resigned or is retired, if it deems necessary.

Article (35): Hearings in disciplinary cases are confidential. The judge shall attend the trial in person or appoint an attorney on behalf thereof. The Council shall summon the judge, and shall hold a trial in absentia if the judge or appointed attorney thereof fail to appear in court.

Article (36): A Judgement issued in a disciplinary case shall incorporate the grounds thereof, which shall be read with the Judgement in court.

Article (37): a- Any breach of Judicial duties or any dishonoring or inappropriate act shall constitute a misconduct subject to disciplinary penalties.

b- The following shall constitute breach of judicial duties: delaying decisions in cases, failing to set a definite time for communicating a judgement, discriminating between parties, issuing inconsistent decisions or decisions which are divergent from established jurisprudence to an extent the Council deems prosecutable; violating confidentiality of judicial deliberations, and failing to appear to work without justification or to comply with set working hours.

Article (38): The Council may impose the following disciplinary measures:

One- Admonition.
Two- Warning.
Three- Salary cuts.
Four- Demotion.
Five- Discharge.
Six- Deposal.

ATTACHMENT C

Part VII
General and Transitional Provisions

Article (39): Judges who are related by kinship or marriage up to the third degree may not serve on the same judicial panel. A judge may not hear a case if he/she is so related to the representative of parties to the dispute or of the Public Prosecution

Article (40): Unless otherwise dictated by necessity formation within the Judiciary shall be carried out once a year during the Month of July . The Chairman shall submit the proposed formations to the Chairman's Bureau for endorsement procedures to be completed within seven days thereafter.

Article (41): Notwithstanding the provisions of any other legislation, the Judicial Inspection Body shall defer to the authority of the Chairman, , and shall submit its reports and recommendation thereto .

Article (42): a- A department under the authority of the Council shall be established to handle Judicial Service, personnel, financial and administrative affairs, and shall be headed by a Secretary General who shall report to the Chairman.

b- Court employees and other employees of the Ministry of Justice employees shall become employees of the Judicial Authority except for those who are retained as employees of the Ministry of Justice on the basis of agreement between the Minister of Justice and the Chairman .

c- 1- A separate budget shall be allocated to the Council within the General Budget. The Council's budget shall be prepared by the Chairman and approved by the Council.

2- Until the Council's budget is approved for the first time, allocations for the Ministry of Justice within the General Budget shall be considered allocations for the Judicial Authority except for any allocations otherwise retained by the Ministry of Justice on the basis of agreement by the Minister of Justice and the Chairman.

ATTACHMENT C

Article (43): Notwithstanding the provisions of any other legislation, the age of retirement shall be seventy two years for the Chief Justice of the Court of Cassation and the Chief Justice of the High Court of Justice, and shall be seventy years for any other judge; the services of a judge shall be terminated ***ipso jure*** upon reaching the stipulated retirement age and shall not be subject to extension. The aforementioned shall not preclude that a judge's service may end or be terminated in accordance with the legislation in force prior to the stipulated age, for any reason including illness.

Article (44): 1- Judicial Recess shall be from the first day of July of each year until the thirtieth day of September of the same year. All Judges are entitled to take their annual leaves during this period .

2- A court shall postpone the hearings for lawyers who choose to take their leave during Judicial Recess.

Article (45): Wherever mentioned in legislation pertaining to the judicial authority and the courts, the phrase "Judicial Council" shall replace the phrase "Ministry of Justice", and the phrase "the Chairman of the Judicial Council" shall replace the phrase "the Minister of Justice" . However, the Civil General Attorney's office shall be subject to the authority of the Minister of Justice in accordance with legislation in force.

Article (46): The Council of Ministers shall issue the regulations necessary for implementing the provisions of this Law including Regulations pertaining to Judicial Service and the Council's financial and administrative affairs.

Article (47): The Autonomy of the Judiciary Law No. (49) for the year 1972 and any amendments thereof shall be repealed..

Article (48): The Prime Minister and the Ministers and the Chief Justice of the Judicial Authority shall be responsible for implementing the provisions of this Law.

ATTACHMENT C

Reasons For the Draft Arbitration Law

Jordan is the first Arab country to enact an arbitration law, the Arbitration Law No. (18) of 1953. However, more than forty years of practical application of this Law have demonstrated the need to amend some of its provisions, and revealed gaps in its treatment of some arbitration issues. This is more so the case, in view of the significant developments in the methods and procedures relating to local and international arbitration, and the emergence of many arbitration agreements which regulate many aspects of arbitration . For one, Jordan is party to some such agreements, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and the Riyadh Agreement on Judicial Cooperation of 1985. Moreover, one has to take into account, the Jordan Civil Procedures Law of 1988, as well as the emergence of many arbitration rules prepared by UNCITRAL (United Nations Committee on International Trade Law), such as the Arbitration Rules of 1976 and the Model Law on International Commercial Arbitration (1985). Jordan is also moving towards building its economy on sound and advanced grounds and on an environment conducive to foreign investments, and on streamlining its procedures and promoting resolutions of disputes in such areas amicably or through arbitration.

All of the above has revealed the need for a modern and sophisticated arbitration Law to replace the Arbitration Law of 1953, and which derives from the most modern legal sources to address issues of local and international arbitration, on basis of established and well known principles of arbitration . The provisions of the new Law conform to a large extent with most recent development in arbitration law and jurisprudence, and eliminate contradictions that have resulted from practical applications of the 1953 Law, as follows::

First: the Draft Law differentiates between local and international arbitration as well as between private and institutional arbitration. The Draft Law defines each of these types in Article (3). Article (3) provides that an arbitration is international if the subject dispute involves one or more issues of international commerce, in addition to other conditions. This provision conforms with the UNCITRAL Model Law on International Commercial Arbitration (1985) as well as with some of the new arbitration laws such as the Egyptian Arbitration Law of 1994.

ATTACHMENT C

Second: The Draft Law stipulates that an arbitration agreement shall be in writing and may take the form of an arbitration clause contained in the contract or a separate arbitration agreement. The Draft Law does not require the parties to an arbitration agreement to specify the subject-matter of the dispute in advance. This allows the parties to submit to arbitration any dispute that may arise in the future. (Article 5).

The Draft Law also permits any party to petition the court before which a case is brought which is the subject of an arbitration agreement, to dismiss the case. In such an event, the court shall refer the dispute to arbitration. (Article 8). The Draft Law also permits the parties to agree to submit a dispute to arbitration even after it has been brought before the court.

Third: The Draft Law stipulates conditions to be met by arbitrators. It provides that an arbitrator shall enjoy legal capacity and shall not be convicted with a felony or a misdemeanor affecting honor. It also contains rules that govern the appointment, recusal , or deposal of arbitrators. The Draft Law stipulates that there should be only one arbitrator. Otherwise, there should be an odd number of arbitrators, and the head of the arbitral tribunal is to be selected in accordance with the procedures stipulated in the Draft Law.

Fourth: It is apparent from all the provisions of the Draft Law that freedom of the parties in selecting the arbitration procedures and in selecting the applicable law to the substance of the dispute is highly regarded. This is a mere application of the principle of freedom of the parties in arbitration, since arbitration may only be conducted upon agreement of the parties to resolve a dispute outside the courts.

As for procedural rules, if the parties fail to designate the applicable law, the arbitral tribunal shall apply the law of the place of arbitration, in the case of private arbitration. In the case of institutional arbitration, the arbitral tribunal shall apply the rules of the institution conducting the arbitration.

As for the law applicable to the substance of the dispute, the Draft Law conforms to approach of modern legislation in this regard. It entitles the parties to select the law to be applied by the

arbitral tribunal to the substance of the dispute. Failing a designation by the parties, the tribunal shall apply the law connected to the subject of the dispute with due respect to applicable customary practices.

Fifth: The Draft Law sets out a special mechanism for notification. It provides that in addition to notifying the addressee in person, notification may be by registered mail or courier mail. It also sets out the date where notifications are deemed to have been received. (Article 17).

Sixth: The Draft Law specifies the procedures for submitting the plaintiff's requests and the matters that need to be included in his statement of claim. The Draft Law also specifies the manner by which the arbitral tribunal shall notify the defendant with the plaintiff's statement of claim, the manner by which the tribunal receives the statement of defense. It also sets out the time periods for such. (Article 18). The Draft Law also specifies the procedures for pleadings (argumentation) and stipulates that minutes of hearings shall be made..

Seventh: The Draft Law permits the arbitral tribunal, , to request from the competent court to subpoena to witness or to issue an order to present any necessary document to the arbitral tribunal, if the witness fails to appear before the arbitral tribunal or it was difficult to obtain any necessary document. The arbitral tribunal may also request the court to issue a decision to hear any witnesses on the tribunal's behalf or to carry out an examination or inspection on any matter presented before the arbitral tribunal.

Eighth: The Draft Law permits any party to the dispute, prior to submitting the dispute to arbitration, to petition a competent court to impose provisional seizure in accordance with the law.

Nine: The Draft Law stipulates a six-month time period for issuing the arbitral award starting from the date on which the last arbitrator has accepted his assignment. However, the Draft Law entitles the court or the institution conducting the arbitration, as the case may be, to extend this period upon the arbitral tribunal's request.

ATTACHMENT C

Tenth: The Draft Law stipulates that the arbitral tribunal shall issue its award no later than thirty days as of the date of the conclusion of the hearings. It also specifies the particulars that need to be included in the award and provides that the arbitrators shall sign the award and shall state the grounds thereof.

Eleventh: The Draft Law permits the parties, prior to the issuance of the arbitral award, to settle the dispute. In this case, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms unless such settlement is contrary to the Public Order. (Article 27).

Twelfth: The Draft Law permits the parties to delegate the arbitral tribunal to settle the dispute (Article 28), a method of arbitration (arbitration by conciliation) which is consistent with the modern legislation and in the international arbitration rules.

Thirteenth: The Draft Law authorizes the arbitral tribunal to issue temporary decisions or decide on any part of the petitions prior to issuing the final award. (Article 26(b)).

Fourteenth: The Draft Law entitles each party to a dispute to challenge the arbitral award at the competent Court of Appeal within a specific time period as of the date of issuing the award. The aforementioned court, upon a party's request, may issue an order to enforce the award unless the award is contrary to Public Order. The court's decision in this regard shall be final and shall as enforceable as any court ruling. In this way, the Draft Law allows only one stage of challenge for arbitral awards to avoid any delays or stalling. (Article 29).

Fifteenth: The Draft Law provides an exhaustive list of grounds for challenge for nullification of an arbitral award. Challenges on other grounds shall be dismissed. (Article 31). The listed grounds conform to the provisions of the New York Agreement which the Kingdom has joined in 1979.

Sixteenth: The Draft Law permits any Jordanian juridical personality of the private sector which is publicly accessible to undertake setting out rules and principles for resolution of international or local disputes by arbitration, if its Charter so allows. (Article 32) Such a provision permits

such persons to establish arbitration centers with special rules, comparable to Arab and international arbitration centers.

Seventeenth: The provisions of the Draft Law shall only apply to disputes submitted to arbitration subsequent to this Draft Law coming into force. The Draft Law shall not affect, amend or repeal any provision of any of the arbitration agreements or procedures concluded before this Draft Law comes into force.

The above has provided a summary of the main provisions of the Draft Law all of which serve the requirements of international and domestic commerce, and of resolving disputes arising therefrom. For all this, the Draft Law was prepared.

ATTACHMENT D

Draft

Law No. ( ) for the Year 1997

ARBITRATION LAW

Article (1) This Law shall be known as the "Arbitration Law for the year 1997", and shall come into force one month after the date of its publication in the Official Gazette.

Article (2) The following words and expressions wherever mentioned in this Law shall have the meaning assigned thereto hereunder, unless otherwise indicated by context.

The Kingdom:	The Hashemite Kingdom of Jordan
The Competent Court:	In the case of local arbitration: the court that has original jurisdiction over the dispute submitted to arbitration. In the case of international arbitration: The Amman Court of First Instance.
Arbitral Tribunal:	A tribunal formed from an arbitrator or a panel of arbitrators to resolve a dispute.

Article (3) For purposes of this Law, arbitration shall be:

First: Local Arbitration:

An arbitration is considered local if it is conducted in the Kingdom, and the subject dispute does not relate to international trade.

Second: International Arbitration:

An arbitration is considered international even if conducted in the Kingdom if the subject dispute involves one or more issues of international commerce, which shall be the case if:

One. The parties to the arbitration agreement have, at the time of the conclusion of the agreement, their principal places of business in different countries. If a party has more than one place of business, its [principal] place of business is that which is connected to the arbitration agreement. If a party does not have a place of business, reference is to be made to its habitual residence.

Two. If the subject-matter of the arbitration agreement relates to more than one country.

ATTACHMENT D

Three. If the [principal] place of business for the parties is in the same country at the time of the conclusion of the agreement, and one of the following places is outside that country:

1. the place of arbitration as determined in, or pursuant to, the arbitration agreement;
2. the place where a substantial part of the obligations of the commercial relationship is to be performed;
3. the place with which the subject-matter of the dispute is most closely connected.

Third: Foreign Arbitration:
An arbitration is considered foreign if it is conducted outside the Kingdom.

Fourth: Private Arbitration:
An arbitration is considered private if conducted by a sole arbitrator or a panel of arbitrators, and is not organized by an institution specialized in arbitration.

Fifth: Institutional Arbitration:
An arbitration is considered institutional if conducted by an institution specialized in organizing and supervising arbitration, whether it is inside or outside the Kingdom.

Article (4) All persons shall have the right to agree to arbitration regarding any right, subject to the following:

One. An arbitration shall not be permitted in matters where conciliation is not permitted.

Two. An arbitration shall not be permitted in matters related to the Public Order.

Three. An arbitration agreement shall be concluded only by a person entitled to dispose of his rights.

Article (5) **Arbitration Agreement:**
An arbitration agreement is an arbitration clause which is contained in a written contract between the parties prior to the occurrence of the dispute, or a separate arbitration agreement between the parties signed after the occurrence of a dispute which may be resolved by arbitration.

Article (6) **Arbitration Clause:**

One. An arbitration clause is an agreement between the parties to submit to arbitration any dispute that may arise between them in respect of the contract. This includes all disputes connected to or related to the contract, or arise or result from its revocation, nullity or annulment.

Two. An arbitration clause must be contained in the contract or in a document which refers to such a clause. [In a document referred to in the contract].

ATTACHMENT D

Three. An arbitration clause shall be considered a severable clause independent of the other terms of the contract which shall continue to be valid irrespective of the annulment, revocation, termination or expiration of the contract.

Article (7) **Separate Arbitration Agreement:**

One. A separate arbitration agreement is a written agreement between the parties to submit any existing dispute to arbitration including a dispute before the competent judicial entity.

Two. An agreement is in writing, if it is contained in an exchange of letters, telegrams, telex or other means of telecommunication between the parties.

Three. A separate arbitration agreement must indicate the subject-matter of the dispute.

Article (8) a. If one party brings a case before a court in a matter which is the subject of an arbitration agreement, the other party may petition the court to dismiss the case before submitting its first statement on the substance of the case. The court shall dismiss the case if it finds that the claim of an arbitration agreement is a rightful claim.

b. The parties may agree to submit a dispute to arbitration even after it has been brought before the court. In such an event, the court shall refer the dispute to arbitration.

Article (9) a. The parties shall have the right to refer the dispute to a sole arbitrator or to a panel, provided that the number of arbitrators thereupon is odd. If the parties fail to agree on the number of arbitrators, the number of arbitrators shall be three.

b. An arbitrator shall be a natural person with legal capacity, not convicted with a felony, or a misdemeanor affecting honor.

c. An arbitrator may be of any nationality unless otherwise agreed by the parties.

Article (10) a. In an arbitration by a sole arbitrator, the parties must agree about the appointment of arbitrator. In an arbitration by a panel of arbitrators, each party shall appoint an equal number on its part. The appointed arbitrators shall then agree to appoint the head of the arbitral tribunal.

b. If the parties fail to agree on the sole arbitrator, or each party fails to appoint one or more arbitrators on its part, or the arbitrators fail to appoint a head of the arbitral tribunal, any party may petition the court to appoint the sole arbitrator, the arbitrators, or the head of the arbitral tribunal. The court's decision in this regard shall be final.

ATTACHMENT D

c. In case of institutional arbitration, the arbitrators shall be appointed in accordance with the arbitration rules selected by the parties or in accordance with the arbitration rules of the institution.

Article (11) An arbitrator who agrees to the arbitration shall disclose to the parties any circumstances likely to affect his impartiality or independence. The parties to the dispute shall be notified of such circumstances, and may in such case, agree to the appointment or decide to replace the arbitrator by another.

Article (12) a. An arbitrator may be recused for the same reasons that a judge may be recused for. In case of private arbitration, a recusation shall be submitted to the court. In the case of institutional arbitration, a recusation shall be submitted to the institution regulating the arbitration proceedings, whose decision in this regard shall be final.

b. An arbitrator may be deposed of by the parties unanimous consent or by the court's decision upon a party's request if the arbitrator is appointed by the court. In case of institutional arbitration, the institution shall have the competence to depose the arbitrator, and its decision in this regard shall be final.

c. If an arbitrator passes away, resigns, is deposed, or is unable to perform his functions during the arbitration proceedings, another arbitrator shall be appointed according to the rules stipulated in Article (10) of this Law.

Article (13) In private arbitration, requests regarding the appointment, recusation or deposal of an arbitrator, or for extension of the period for issuing an arbitral award shall be submitted to the Court of First Instance which has venue jurisdiction over the dispute by means of petitions prepared in accordance with the Civil Procedures Law in force.

Article (14) a- (1) The arbitral tribunal shall have the competence of deciding to the validity of the arbitration agreement subject to applicable rules and conditions of the local or international arbitration in that regard.
(2) The arbitral tribunal shall rule on all pleas raised by the parties in relation to the arbitration.
(3) The arbitral tribunal shall implement with respect to arbitral procedures, the law chosen by the parties or the rules or procedures agreed to thereby.

b- Failing a designation by the parties according to paragraph (a)(3) of this Article, the arbitral tribunal shall apply the following:

(1) In a private arbitration, the tribunal shall apply the law of the place of arbitration.

(2) In an institutional arbitration, the tribunal shall apply the rules of the institution conducting the arbitration if any, otherwise, it shall apply the law of the place of arbitration.

ATTACHMENT D

c- The tribunal shall implement with respect to the substance of the dispute the law chosen by the parties pursuant to the contract concluded between them. Failing a designation by the parties, the tribunal shall apply the law connected to the subject of the dispute with due respect applicable customary practices.

Article (15) Arbitration shall be conducted at the place agreed upon by the parties. Failing such agreement by the parties, the place of arbitration shall be determined by the arbitral tribunal, with due regard to the circumstances of the case, including convenience of the parties.

In any event, the arbitral tribunal may meet at any place it considers appropriate for any reason including hearing witnesses, inspection, or examination of documents. If the tribunal select the place, the parties shall be given sufficient advance notice of the time and place of the meeting.

Article (16) Arbitration proceedings shall be conducted in the language agreed upon by the parties. Failing such agreement, the arbitral tribunal shall determine the language to be used in the proceedings. Any written evidence or documents submitted to the arbitral tribunal shall be translated to the selected language, and copies of the translated documents shall be presented to all the parties.

Article (17) Notifications in accordance with the provisions of this Law shall be made directly to the addressee, or by registered mail or by courier mail, provided:

One. Notifications are deemed to have been received fifteen days as of the date of deposition if the addressee's mailing address is in the Kingdom, and thirty days as of the date of deposition if the addressee's mailing address is outside the Kingdom. Determination of receipt in accordance with this Paragraph shall be conclusive and cannot be proven otherwise.

Two. Notifications are deemed to have been received as of the date of receipt by the addressee in case of notification by courier mail.

Article (18) a. The arbitral tribunal shall determine a period of time for the plaintiff to submit the statement of claim, which shall include the following:

(1) Name and address of both the plaintiff and the defendant.

(2) The facts supporting the claim and any matters related thereto.

(3) The signature of the plaintiff or the attorney thereof.

b. The plaintiff shall state his requests, and shall attach to his statement of claim all the documents supporting his claim with a listing of such documents, as well as copies thereof for each of the defendants and the arbitrators. The plaintiff shall also specify the facts that he intends to prove through witnesses.

c. The arbitral tribunal shall notify the defendant with the statement of claim and the documents attached therewith, within fifteen days from the date of its submission.

ATTACHMENT D

The defendant shall state his defense in writing within fifteen days of notification, and shall submit with this statement all the documents supporting his defence, and copies thereof for each of the plaintiffs and the arbitrators, and shall specify the facts he intends to prove through witnesses. The arbitral tribunal may upon a justified written request from the defendant extend the said fifteen day period. If the defendant fails to submit his defence within the specified time period, the arbitral tribunal shall continue the proceedings and the defendant may submit his defence and supporting documents during the first hearing.

d. The arbitral tribunal may request or permit any party to submit any documents or additional evidence at any stage of the arbitration.

e. The arbitral tribunal may at any stage of the arbitration decide to carry out an examination and seek expert opinion by one or more experts on any movable or immovable property or any other issues to be determined by the arbitral tribunal.

If the parties agree to elect the expert or experts, the tribunal shall appoint the expert or experts agreed upon by the parties. Failing such agreement, the tribunal shall appoint the experts. The tribunal shall specify to the experts their task and shall set a date for delivering their report. Upon delivery of the report, copies thereof shall be notified to the parties. If a party so requests, or if the arbitral tribunal considers it necessary, the expert may participate in a hearing for discussing the report.

Article (19) a. The arbitral tribunal shall hold its hearings after giving the parties sufficient advance notice of the time and place of the hearing. Minutes of the hearings shall be maintained which shall be signed by members of the tribunal and by the clerk.

b. The parties may appoint attorneys and seek counselors.

c. Any party may appoint one translator or more at its own expense.

Article (20) a. If any witness fails to appear before the tribunal, or it is not possible to obtain any documents necessary for the arbitration, the arbitral tribunal may request from the competent court to subpoena the witness or issue an order to submit the necessary document to the arbitral tribunal. The court may impose a penalty stipulated by the law on any witness who fails to appear before the arbitral tribunal.

b. The arbitral tribunal may request the court to issue a decision to hear any witness on the tribunal's behalf or to carry out an examination or inspection on any matter presented before the arbitral tribunal.

ATTACHMENT D

Article (21) Witnesses, experts, and translators shall be heard by the tribunal under oath. Any perjury committed before the arbitral tribunal shall be deemed as committed before a competent court.

Article (22) a. Any party to a dispute, may, prior to submitting the dispute to arbitration, petition a competent court to take a provisional measure in accordance with the law, including provisional seizure. A provisional seizure decision shall be deemed cancelled if the party fails to submit the dispute to arbitration within eight days as of the date of issuing the decision.

b. The arbitral tribunal shall either maintain or cancel the provisional seizure in accordance with the final arbitral award.

Article (23) a. If the claimant fails to submit his statement of claim and the supporting documents in accordance with Article (18) of this Law, the arbitral tribunal shall terminate the arbitration proceedings.

b. 1- If the defendant appears before the arbitral tribunal within the set time period and submits a counterclaim, the tribunal may, upon the defendant's request, dismiss or rule on the claim.

2- If the defendant submits a counterclaim, he may request from the court to dismiss both claims, or to dismiss the original claim, or to proceed with the counterclaim, or to rule on both claims simultaneously.

Article (24) a. Subject to the provisions of Paragraph (c) of this Article, the arbitral tribunal shall announce the conclusion of its hearings after hearing all the evidence and the closing statements.

b. Upon conclusion of the arbitration hearings, the arbitral tribunal shall convene for confidential deliberations to issue the final award.

Three. The arbitral tribunal may re-hold hearings to verify any matter which it deems necessary to decide on the dispute.

Article (25) a. The arbitration award shall be issued within six months as of the date at which the last arbitrator has accepted his assignment, or within the time period prescribed by the parties. The court or the institution in charge of the arbitration, as the case may be, may extend this time period upon request from the arbitral tribunal.

b. Where any party makes a forgery claim to a court regarding a document submitted to arbitration, the arbitral tribunal shall suspend the arbitral proceedings and, accordingly the set date for issuing the award, until the competent court rules on the forgery claim. The arbitral tribunal, upon request from any party or on its own initiative, may decide to continue with the

ATTACHMENT D

arbitration proceedings if it determines that it is possible to rule on the substance of the dispute or on one or more matters relating to the dispute without relying on the document alleged to be forged.

c. Where the forgery claim proves unsubstantiated, the arbitral tribunal shall order compensation for the other party upon the party's request for the damages incurred. The amount of such compensation shall be determined in accordance with the evidence submitted thereabout.

Article (26) a. Subject to the provisions of Article (25) of this Law, the arbitral tribunal shall issue its award no later than thirty days as of the date of the conclusion of the hearings. The award shall be in writing. In arbitral proceedings with a panel of arbitrators, decisions shall be reached unanimously or by majority vote of its members. Any opposing arbitrator shall state in writing the reasons for opposing the arbitral award.

b. The arbitral tribunal may issue temporary decisions or decide on any part of the petitions prior to issuing its final award.

c. The tribunal's award shall be signed by the arbitrators and shall include the following:

1- Names and addresses of the arbitrators.
2- Names and addresses of the parties.
3- Names and addresses of the lawyers or representatives of the parties.
4- The subject matter of the dispute.
5- A summary of the claims and evidence submitted by the parties.
6- The award's statement and grounds thereof.
7- The expenses and fees due to arbitrators and lawyers as estimated by the arbitral tribunal and the party which shall incur partially or totally such expenses and fees.
8- The place and date of issuing the award.

d. A copy of the award shall be delivered directly to each party or by registered mail or courier mail. The award shall not be published unless the parties agree otherwise.

Article (27) If the parties agree to settle the dispute prior to the issuance of the arbitral award, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms unless such settlement is contrary to Public Order. Such award shall be as enforceable as any other arbitral award.

Article (28) Parties to the dispute may delegate the arbitral tribunal to settle the dispute submitted thereto by conciliation in accordance with the principles of equity.

ATTACHMENT D

Article (29)a. Any party may challenge the arbitral award to the competent Court of Appeal within thirty days of the date of issuance of the award if the award is delivered in the presence of the parties, or as of the next day of notification if delivered in absentia.

b. If the time limit prescribed in Paragraph (a) of this Article lapses without a challenge to the arbitral award, the Court of Appeal, upon a party's request, shall issue an order to enforce the award unless the award is contrary to Public Order. The court's decision in this regard shall be final and shall be enforceable in the manner court rulings are enforced.

Article (30) The arbitral tribunal, upon its own initiative or upon the request of any party, may correct the award for any clerical or typographical or computational errors. The tribunal shall make such corrections on the original version of the award and shall place its signature thereupon. The tribunal's decision on whether to correct or not to correct the errors is subject to appeal in accordance with Article (29) of this Law.

Article (31) a. An arbitral award may be challenged on grounds of nullity for any of the following reasons:

1- If the arbitral award is contrary to the Public Order.

2- If the arbitration agreement is null or has expired.

3- If the composition of the arbitral tribunal is not in accordance with the arbitration agreement or with the arbitral procedures agreed on by the parties, or the procedures applied to the arbitration proceedings.

4- If the arbitral tribunal fails to apply the rules, agreed on by the parties, to the substance of the dispute.

5- If the award deals with a dispute which is not contemplated by or not falling within the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the arbitration agreement, or affects a person who is not a party in the arbitration. However, if the decisions on matters submitted to arbitration can be separated from those not so submitted, the Court of Appeal may nullify the award in part.

6- If an arbitrator is incapacitated during the arbitration proceedings.

b. The Court of Appeal may remand the arbitral award to the arbitral tribunal. In such a case, the arbitral tribunal shall issue its decision within thirty days from the Court of Appeal's decision.

c. The Court of Appeal shall hold hearings in cases of challenges to arbitral awards.

Article (32) Any Jordanian juridical personality of the private sector and which is publicly accessible may undertake to set out rules and principles for resolution of international or local disputes by arbitration if its Charter so allows, and provided it sets out rules on conducting arbitral proceedings.

ATTACHMENT D

Article (33) The provisions of this Law shall only apply to disputes submitted to arbitration subsequent to this Law coming into force.

Article (34) The Arbitration Law No. (18) of 1953 shall be repealed. The provisions of any other legislation shall be repealed to the extent that they conflict with the provisions of this Law. Nothing in this Law shall affect, amend or repeal any provision of any of the arbitration agreements or procedures concluded before this Law comes into force.

Article (35) The Prime Minister and the Ministers are charged with the implementation of the provisions of this Law.

ATTACHMENT D